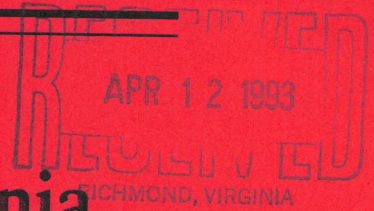


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SUPREME COURT OF VIRGINIA



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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 921705

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**McCLANAHAN INGLES,**

*Appellant,*

**v.**

**ROBERT C. DIVELY,**

*Appellee.*

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**JOINT APPENDIX  
VOLUME II**

---

**A. Davis Bugg, Jr.  
RUMSEY, BREEDEN, HUBBARD,  
BUGG & TERRY  
Steamboat Road  
P.O. Box 340  
Irvington, VA 22480  
(804) 438-5522**

*Counsel for Appellant*

**William D. Bayliss  
Dana D. McDaniel  
WILLIAMS, MULLEN  
CHRISTIAN & DOBBINS  
1021 East Cary Street  
Two James Center  
Richmond, VA 23210-1320  
(804) 783-6459**

*Counsel for Appellee*



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1                    WILLIAM ADAMS, called as a witness by  
2 and on behalf of the Plaintiff, having been first  
3 duly sworn, was examined and testified as follows:  
4

5                    DIRECT EXAMINATION

6 BY MR. BAYLISS:

7            Q.        Good morning, Mr. Adams. Could you  
8 state your name and occupation.

9            A.        I'm William W. Adams. I'm investigator  
10 with the Gloucester County Sheriff's Office.

11          Q.        And how long have you been with the  
12 Sheriff's Office?

13          A.        Nine years.

14          Q.        Were you involved in the investigation  
15 of Mr. Robert Dively?

16          A.        Yes, I was.

17          Q.        And when did you become involved in  
18 that investigation?

19          A.        On April 12th, 1990.

20          Q.        Would you get in front of you -- I know  
21 you have your file but also there's a plaintiff's  
22 exhibit book and I'll refer to that as well as  
23 yours. Would you tell me on April the 12th how you  
24 became involved in this?

25          A.        I was instructed by my lieutenant to go



W. Adams - Direct

1 down to Sea Technology located in Ordinary, Virginia  
2 and talk with a Mr. Ingles in reference to a  
3 possible embezzlement at his company.

4 Q. Would you look at Exhibit 23. Would  
5 you identify that, please?

6 A. This is the initial offense report that  
7 I took after I had spoke with Mr. Ingles.

8 Q. You indicate it's your supervisor that  
9 wanted you to investigate a potential embezzlement I  
10 think is what you said?

11 A. Yes, sir.

12 Q. Your notes here say on April the 12th  
13 Mr. Ingles reported an embezzlement?

14 A. Yes, sir.

15 Q. Tell me exactly what Mr. Ingles said  
16 that prompted you to say that he reported an  
17 embezzlement.

18 A. He reported, if I can read from my  
19 notes, report, Mr. Dively was employed as president  
20 of the company by Ingles at the time of the alleged  
21 offenses. Mr. Dively has since resigned on March  
22 the 9th, 1990. Ingles reports that during Dively's  
23 stint as president three contracts providing goods  
24 and services were initiated at the expense of Sea  
25 Technology, Limited.

W. Adams - Direct

1 Q. At the beginning of your report, the  
2 notes that you make, did Mr. Ingles report to you a  
3 potential embezzlement or did he tell you it was an  
4 embezzlement?

5 A. It was his opinion it was an  
6 embezzlement of goods and services.

7 Q. On April the 12th that was his opinion?

8 A. Yes, sir.

9 Q. You got down here the items  
10 embezzlement total \$70,730. Where did you get that  
11 information?

12 A. From the Shark Island, Dock of the Bay  
13 and there was also a contract with a Mr. Keating of  
14 Florida. I just added those three figures from what  
15 he reported to me and I came up with the total  
16 figure.

17 Q. Going through your incident report of  
18 April the 12th, 1990, did he talk to you about items  
19 of personal property that had been taken?

20 A. Yes. He had talked about some  
21 equipment there at Sea Technology that had been  
22 taken upon Mr. Dively's leaving Sea Technology.

23 Q. All right. Now, turn -- your report is  
24 dated April the 18th of 1990. Turn if you would to  
25 the last page and I think you've got there on 2-15?



1 A. Yes, sir.

2 Q. Is that -- that's a typographical  
3 error?

4 A. Yeah. It should be April the 15th.

5 Q. Would you read that into the record?

6 MR. RUSSELL: Excuse me. Where are  
7 you?

8 MR. BAYLISS: Last page where he signed  
9 on April the 18th.

10 THE COURT: Page 5, Mr. Russell.

11 THE WITNESS: "On April 15th, 1990,  
12 Dively returned all equipment following a  
13 restraining order in a civil suit Ingles initiated.  
14 Ingles did not know that Dively had taken a pedestal  
15 also and only 15 of 25 spools of wire was returned.  
16 Adam Whiting was an employee of Dively's and  
17 returned the equipment to Sea Technology."

18 BY MR. BAYLISS:

19 Q. And so did Ingles tell you some other  
20 things were missing even though many things had been  
21 returned?

22 A. Yes.

23 Q. Your investigation goes on?

24 A. Yes. After the direct indictments were  
25 filed by the Grand Jury --

W. Adams - Direct

1 Q. On what date was that?

2 A. That was the 7th.

3 Q. Between April the 12th and May the 7th  
4 did you have any further investigative  
5 responsibility?

6 A. Between April the --

7 Q. 12th when he came in and told you there  
8 had been an embezzlement and May the 7th when the  
9 indictments were made?

10 A. There had been some meetings at the  
11 Commonwealth's Attorney's office in Gloucester  
12 County. Present were myself, Special Agent Will  
13 Colton, there was an attorney there. I can't really  
14 recall his name.

15 Q. Alvin Anderson?

16 A. Yes, Mr. Shaw and Mr. Ingles.

17 Q. Now, ultimately on May the 9th you also  
18 had a search warrant, right?

19 A. Yes, sir.

20 Q. And you executed the warrant. Did you  
21 find anything that you were told would be there?

22 A. I found a 14 inch band saw that was  
23 there but there was no serial number and Mr. Dively  
24 did produce a receipt saying that he did buy this.

25 Q. Had somebody told you that there were a



W. Adams - Direct

1 lot of other things over there that you needed the  
2 search warrant so that you could pick them up?

3 A. Yeah, such as hand crimpers.

4 Q. Who told you that?

5 A. Mr. Ingles.

6 Q. Did you find any of those things?

7 A. No.

8 MR. BAYLISS: I move to introduce this  
9 as Exhibit 23, this incident report.

10 MR. RUSSELL: No objection.

11 THE COURT: Introduced and marked as  
12 Plaintiff's Exhibit 23.

13 (The document referred to was marked by  
14 the Court as Plaintiff's Exhibit 23, and received  
15 into evidence.)

16 BY MR. BAYLISS:

17 Q. Now, you -- tell me how the office in  
18 Gloucester works as far as your continuing  
19 investigation. Were you assigned to this case?

20 A. Yes, I was.

21 Q. And did you work with State Police  
22 Investigator Colton?

23 A. Yes.

24 Q. Had you worked with him before?

25 A. No, sir.

W. Adams - Direct

1 Q. First time you ever worked with him?

2 A. Yes, sir.

3 Q. And you continued your investigation to  
4 assist in the preparation for trial?

5 A. Yes, sir.

6 Q. And turn if you would to Exhibit 26.

7 MR. BUGG: Your Honor, we had  
8 previously registered an objection to this line of  
9 questioning in our motion for limine and we renew it  
10 now.

11 THE COURT: Take a little walk,  
12 please.

13 (The jury withdrew from the courtroom.)

14 MR. BUGG: Judge, you haven't seen this  
15 yet. This is a letter that --

16 THE COURT: Letter from Mr. Adams to  
17 Mr. William Shaw, Commonwealth's Attorney.

18 MR. BUGG: Yes, sir. Mr. Shaw is the  
19 man that is an elected official in Gloucester County  
20 that has the duty to determine whether there is  
21 probable cause, whether the facts present an  
22 appropriate criminal case, and that is what he was  
23 elected to do and that is what he did, Your Honor.  
24 It is not appropriate for a police officer to take  
25 the stand and say that he contested that opinion of



W. Adams - Direct

1 the Commonwealth's Attorney in some way. A police  
2 officer is an investigative man. The Commonwealth's  
3 Attorney is the one that applies the law to the  
4 facts and makes the legal decisions.

5 When an investigating officer says in  
6 my opinion in some way this is not a criminal case  
7 or there isn't probable cause or this ought to be in  
8 civil court that is in effect permitting the officer  
9 to render an opinion as to whether probable cause  
10 exists and whether the officer should not be  
11 permitted to render that opinion, and that is the  
12 basis for our objection and that's the purpose for  
13 this letter and that's going to be the next line of  
14 examination.

15 MR. BAYLISS: In response to that, and  
16 I think Mr. Bugg will concede this, maybe he won't,  
17 from a legal standpoint malicious prosecution case,  
18 the prosecution -- the malicious prosecution  
19 commenced when he went to see Officer Adams. There  
20 is a continuing duty that if during the course of  
21 that investigation facts are uncovered,  
22 circumstances arise, et cetera, that indicates there  
23 is no probable cause that the Commonwealth and the  
24 complaining witness have to end that prosecution.

25 In this case we have presented direct

W. Adams - Direct

1 testimony that Mac Ingles said to at least two  
2 independent persons that he controls Gloucester  
3 County, that he had it locked up and even he had  
4 influence over the circuit judge.

5 THE COURT: That's unrefuted at this  
6 point.

7 MR. BAYLISS: It's unrefuted. I will  
8 proffer to the Court on Page 110, I'll read it to  
9 you right now, Page 110 of Bill Shaw's deposition,  
10 Bill Shaw says, I hope Mac Ingles wins. He is  
11 correct. He is a civil servant. He's supposed to  
12 be objective. I'm going to prove he wasn't  
13 objective and I believe it is absolutely germane to  
14 hear from Investigator Adams and Investigator Colton  
15 as to facts and circumstances they gathered and what  
16 they told Bill Shaw and, in fact, you will hear from  
17 Colton that this is the first time it's ever  
18 happened to him where the Commonwealth wouldn't  
19 listen to him and both of these gentlemen told him  
20 they believed it was a civil case, not a criminal  
21 case. Both of these gentlemen told him they  
22 believed Mac Ingles was not being forthcoming and  
23 honest and both of them warned him, don't waste the  
24 taxpayers money, and he doesn't want that in. Yes,  
25 sir, it is prejudicial because it's what this case

W. Adams - Direct

1 is all about.

2 MR. BUGG: Your Honor, I've stated my  
3 reasons.

4 THE COURT: Let me say, Mr. Bugg, that  
5 I fully agree with you that as the constitutional  
6 officer, the Commonwealth's Attorney of Gloucester,  
7 Mr. Shaw, has the ultimate responsibility and duty  
8 to submit to the Grand Jury indictments that he  
9 considered should be submitted, no question about  
10 that. He is the ultimate person to determine that,  
11 but when he does not and unless you can tell me to  
12 the contrary that he personally went out and  
13 investigated this matter he's got to rely on his  
14 investigative officers for advice, at least that's  
15 been my experience. I tried 75 murder cases in my  
16 time plus a few other criminal matters and I always  
17 thought that the Commonwealth Attorney relied on  
18 primarily -- when he had investigative officers  
19 involved he relied primarily on their  
20 investigation.

21 That doesn't necessarily mean he has  
22 to. It doesn't mean he has to but it means that he  
23 does or should. The Commonwealth Attorney is not  
24 only elected there to prosecute guilty people he has  
25 an equal responsibility of seeing that innocent



W. Adams - Direct

1 people are not prosecuted as does a Grand Jury.  
2 When you instruct the Grand Jury you tell them that  
3 a person's name is just as important as any other  
4 matter they will consider and if there's anything  
5 that should exonerate them before the Grand Jury  
6 they ought to hear it so they can indicate whether  
7 they want to indict or not.

8 It seems to me that it goes to whether  
9 or not Mr. Shaw on his own -- and he can do it.  
10 Don't misunderstand me. He didn't even have to --  
11 technically he didn't even have to get these people  
12 involved. He could have on his own sent an  
13 indictment right on down to the Grand Jury that  
14 day. He had to have somebody to bill for it and  
15 technically he could appear before himself but he  
16 didn't do that. He had Mr. Ingles and some other  
17 officer appear before the Grand Jury. I'm going to  
18 permit this, Mr. Bugg. I note your exception.

19 MR. BUGG: Thank you, Your Honor.

20 THE COURT: Bring the jury back in.

21 (The jury was returned to the  
22 courtroom.)

23 BY MR. BAYLISS:

24 Q. All right. Would you look at  
25 Plaintiff's Exhibit 26?

W. Adams - Direct

1 A. Yes, sir.

2 Q. Can you identify that, please?

3 A. It's a letter I wrote dated July 5th,  
4 1990 to Mr. Shaw, the Commonwealth Attorney at  
5 Gloucester County, in reference to Sea Technology.

6 Q. This was written to you after you and  
7 Officer Colton had continued your investigation,  
8 interviewed witnesses other than Mr. Ingles, and  
9 come to certain conclusions in your own mind,  
10 correct?

11 A. Yes.

12 Q. Let's take it paragraph by paragraph.  
13 Read the first paragraph.

14 A. "Will Colton has interviewed Jane Hogge  
15 and Trudy Pells. I asked him what he thought of the  
16 interviews. He told me to be very careful in  
17 proceeding with this especially talking to hostile  
18 witnesses."

19 Q. And that was talking to Jane Hogge and  
20 Trudy Pells?

21 A. Yes, sir.

22 Q. Go ahead.

23 A. "Will gave me his personal opinion  
24 which I will share with you. In talking with Hogge  
25 and Pells they both told him that Ingles and Dively

W. Adams - Direct

1 have been sucking money out of the accounts of Sea  
2 Tech for a long time. Example, taking trips to  
3 Australia for two or three weeks at a time for a  
4 supposed boat show."

5 Q. Let me stop you there. You say, for  
6 example, taking trips to Australia two or three  
7 weeks at a time for supposed boat show. Did you  
8 have any indication as to which of the individuals  
9 had taken that trip to Australia for two or three  
10 weeks at a time for a supposed boat show?

11 A. No, sir. Mr. Colton gave me that  
12 information.

13 Q. Go ahead.

14 A. "They further believe that this is not  
15 a criminal matter but a civil matter. They state  
16 Dively and Ingles have been squabbling for a long  
17 time. I think you should determine if Dively's  
18 attorney is going to bring these trips up in court.  
19 Dively mentioned these trips that Ingles took to me  
20 when I arrested him."

21 Q. You had discussed this to Mr. Dively?

22 A. He discussed that in James City County  
23 Police Department.

24 Q. Read the next --

25 A. There is a typo here and it is a little



W. Adams - Direct

1 too late after I did write it. Do you want me to  
2 read it?

3 Q. Read as is.

4 A. "I am not trying to say Ingles has a  
5 legitimate argument" -- I meant to say I am not  
6 trying to say Ingles does not have a legitimate  
7 argument -- "but is Ingles being straight with us."

8 Q. We'll stop right there. You had a  
9 question in your mind whether Ingles was telling you  
10 the truth, didn't you?

11 A. Yes, sir.

12 Q. And you told Bill Shaw that, didn't  
13 you?

14 A. Yes, sir.

15 Q. Go ahead.

16 A. "I would hate for all this work to be  
17 done just to end up in civil court. It would be a  
18 lot of wasted time for both of our offices."

19 Q. And that's, in fact, what happened,  
20 isn't it, it ended up in civil court?

21 A. Yes, sir. It ended up in --

22 MR. RUSSELL: Objection. I have to  
23 object for leading.

24 THE COURT: I sustain the objection.

25 BY MR. BAYLISS:

W. Adams - Direct

1 Q. What happened in criminal court?

2 A. The case was dismissed.

3 Q. Were you asked to testify?

4 A. I was asked to testify and did not  
5 testify.

6 Q. You did not testify?

7 A. I did not testify.

8 Q. And were you under subpoena?

9 A. Yes, sir.

10 Q. Did you have a conversation with Bill  
11 Shaw?

12 A. Yes, sir.

13 Q. And did he ever call you as a witness  
14 in this case?

15 A. No, sir.

16 Q. You had given Bill Shaw an opinion, had  
17 you not?

18 A. Yes, sir.

19 Q. And what was that opinion?

20 A. I thought that this was a civil case  
21 and it should be worked out between both Mr. Dively  
22 and Mr. Ingles.

23 Q. Now, go ahead and read the last  
24 paragraph.

25 A. "In the conversation I had with Dively

W. Adams - Direct

1 at the time of the arrest he stuck with his story  
2 that he is a 50/50 stockholder, but if Ingles has  
3 documents to prove his ownership then we are in good  
4 shape."

5 Q. He never came with these documents?

6 A. At the time of this letter I have not  
7 seen the documents.

8 Q. Have you ever seen documents?

9 A. I've seen copies of stock certificates  
10 after I wrote this letter that Mr. Shaw showed me.

11 Q. Had you seen copies of tax returns and  
12 financial statements where Mr. Ingles was shown as a  
13 50/50 owner?

14 A. No.

15 Q. The ownership was important to you,  
16 wasn't it?

17 A. Yes, sir.

18 Q. Did you believe Ingles was being  
19 forthcoming and honest with you?

20 THE COURT: I sustain. What he  
21 believes, Mr. Bayliss, is not --

22 MR. BAYLISS: I move to introduce that  
23 as the next exhibit.

24 MR. RUSSELL: Over the same objection  
25 previously stated.



W. Adams - Direct

1 THE COURT: Introduced and marked as  
2 Plaintiff's Exhibit Number 26.

3 (The document referred to was marked by  
4 the Court as Plaintiff's Exhibit 26, and received  
5 into evidence.)

6 BY MR. BAYLISS:

7 Q. Now, turn if you would to 27.

8 MR. RUSSELL: Your Honor, for the  
9 record, we have the same objection to this document  
10 as previously stated.

11 THE COURT: All right, sir.

12 BY MR. BAYLISS:

13 Q. Can you identify this letter?

14 A. This is a letter dated July 16th from  
15 Mr. Shaw to myself and Special Agent Will Colton of  
16 Virginia State Police.

17 Q. Could you read that into the record?  
18 It's very short.

19 A. "Reference: Commonwealth versus  
20 Dively. Gentlemen, both of you have indicated your  
21 opinion that the cases are civil rather than  
22 criminal. While I, of course, respect and ask your  
23 opinion about the strength and credibility of  
24 witnesses, assessment of cases, et cetera, I  
25 nevertheless do not want your opinion about the

W. Adams - Direct

1 Dively cases to hinder your performance. I expect  
2 each of you to pursue the truth of the case  
3 vigorously."

4 Q. Did you do so, pursue the truth of the  
5 case vigorously?

6 A. To tell you the truth, sir, after that  
7 letter was written there wasn't really much I did  
8 after that. I interviewed the people at Sea  
9 Technology. Will Colton and Mr. Shaw basically did  
10 the rest.

11 Q. Have you ever gotten a letter like that  
12 from the Commonwealth's Attorney? Have you ever got  
13 a letter like that in any of your investigations in  
14 Gloucester?

15 A. No, sir.

16 MR. BAYLISS: I move to introduce  
17 that.

18 THE COURT: Over the objection,  
19 introduced and marked as Plaintiff's Exhibit 27.

20 (The document referred to was marked by  
21 the Court as Plaintiff's Exhibit 27, and received  
22 into evidence.)

23 MR. BAYLISS: That's all I have.  
24  
25

CROSS-EXAMINATION

BY MR. RUSSELL:

Q. Good morning, sir. When you said in this letter, Plaintiff's Exhibit 26, this memorandum to Mr. Shaw, that you didn't believe Ingles was being straight with you. You were talking about the fact you had not yet seen the stock certificates, correct?

A. Yes, sir.

Q. And after that was written, Mr. Shaw showed you copies of the stock certificates, correct?

A. Yes, sir.

Q. And that satisfied your curiosity, didn't it?

A. Yes, sir.

Q. And when you first got involved with this case you thought there was probable cause to prosecute this man for criminal activity, did you not?

A. Yes, sir.

MR. BAYLISS: Your Honor, I object to what his thinking is. His thinking is not relevant in this case.

THE COURT: Mr. Bayliss, it seems to me

W. Adams - Cross

1 that his first brush with it he gave an opinion  
2 after he finished it so it seems to me his first  
3 brush with it he also has an opinion if he has one.

4 MR. BAYLISS: His thinking is not  
5 relevant. What I've given you is his report to the  
6 Commonwealth's Attorney.

7 THE COURT: I understand. I sustain  
8 the objection, Mr. Russell.

9 MR. RUSSELL: Your Honor, if I might  
10 respond to that, in the letter, Mr. Adams indicates  
11 that his personal belief is perhaps civil rather  
12 than criminal, something I'll go into in a minute.  
13 Certainly that is his personal opinion. That door  
14 has been opened.

15 THE COURT: I have a tendency to agree  
16 with you. Go ahead. I'll let you.

17 BY MR. RUSSELL:

*Amazing*

18 Q. Thank you, Your Honor. When you first  
19 became involved in this case right up to the time of  
20 the Grand Jury you believed there was probable cause  
21 to indict Mr. Dively for these felonies, correct?

22 A. I had taken a report and I was going to  
23 check out what Mr. Ingles had told me, yes, sir.

24 Q. You thought there was probable cause?

25 A. And if I had found these to be



W. Adams - Cross

1 accurate, then yes, there would have been probable  
2 cause, but the stock certificates -- once I found  
3 out about the stock certificates I was right in my  
4 mind.

5 THE COURT: May I suggest you ask him  
6 at what stage of his investigation, first brush,  
7 middle way through the investigation, that he had  
8 these thoughts?

9 BY MR. RUSSELL:

10 Q. At first brush you thought there was  
11 probable --

12 A. I had no reason to doubt Mr. Ingles.

13 Q. My question is, you thought there was  
14 probable cause to indict him for felonies at first  
15 brush?

16 A. Yes, sir.

17 Q. And when Mr. Shaw showed you copies of  
18 the stock certificates in response to your  
19 memorandum you again thought there was probable  
20 cause?

21 A. Yes.

22 Q. You were first asked to investigate  
23 this case by Lieutenant Nicely?

24 A. Yes, sir.

25 Q. And he's your superior in the Sheriff's

1 Department?

2 A. Yes, sir.

3 Q. Mr. Ingles contacted somebody in the  
4 Sheriff's Department before he met you on April  
5 12th, correct?

6 MR. BAYLISS: I object to that. It's  
7 based on hearsay.

8 THE COURT: Did Ingles contact you in  
9 any way prior to April 12th?

10 THE WITNESS: No, sir.

11 THE COURT: Sustain the objection.

12 BY MR. RUSSELL:

13 Q. You contacted him, right?

14 A. Yes, sir.

15 Q. And you were told to do that by your  
16 superior?

17 A. Yes, sir.

18 Q. Now, sir, if you can look at your  
19 report, your sheriff's report?

20 THE COURT: What number is that?

21 MR. RUSSELL: Plaintiff's Exhibit 23.

22 BY MR. RUSSELL:

23 Q. Do you have that in front of you, sir?

24 A. Yes, sir.

25 Q. The first page, Mr. Bayliss asks you

W. Adams - Cross

1 that in the first paragraph Mr. Ingles reported an  
2 embezzlement of money and goods. The word  
3 embezzlement was your word, not Mr. Ingles?

4 MR. BAYLISS: Ojection. He already  
5 testified it was Mr. Ingles who told him that.

6 MR. RUSSELL: I'm entitled to  
7 cross-examine the witness.

8 THE COURT: Go ahead, Mr. Russell.

9 BY MR. RUSSELL:

10 Q. That was your word, not Mr. Ingles,  
11 correct?

12 A. That's what I was sent down there to  
13 investigate. That's what I was told to  
14 investigate. I would have to look at the  
15 transcripts of what Mr. Ingles did tell me.

16 Q. And you were told to investigate an  
17 embezzlement by Lieutenant Nicely, not by  
18 Mr. Ingles?

19 A. After I talked to Mr. Ingles that's  
20 what I thought was going on.

21 Q. So embezzlement was your word, not  
22 his?

23 MR. BAYLISS: Same objection. Arguing  
24 with his witness. It is not proper  
25 cross-examination. He already testified that his

W. Adams - Cross

1 notes are from what Mr. Ingles told him.

2 THE COURT: That's what he said.

3 BY MR. RUSSELL:

4 Q. Can you flip to Page 4 of your  
5 supplemental report?

6 A. Yes, sir.

7 Q. On April 17, 1990 you interviewed some  
8 individuals at Sea Technology, correct?

9 A. Yes, I did.

10 Q. And these were employees?

11 A. Yes, sir.

12 Q. They were cooperative with you?

13 A. Yes, sir.

14 Q. They didn't appear to be nervous or  
15 withholding anything?

16 A. No, sir.

17 Q. What did Donald Garland tell you?

18 MR. BAYLISS: What Donald Garland told  
19 him is hearsay. His report is in the record but  
20 what Donald Garland told him is hearsay.

21 MR. RUSSELL: We are talking about what  
22 is in this man's mind, his opinion.

23 MR. BAYLISS: I withdraw the objection  
24 if that's what we are talking about is his opinion.

25 THE COURT: That's what we're talking



W. Adams - Cross

1 about.

2 BY MR. RUSSELL:

3 Q. Sir, what did Mr. Garland tell you?

4 A. "Al Brooks who was supervisor at the  
5 time at Sea Technology told me that they were moving  
6 the equipment to Sea Technology II in Williamsburg.  
7 Garland stated he made two trips to Williamsburg."

8 Q. You interviewed Sharon Garland, and  
9 what did she tell you?

10 A. "Brooks told me that they were moving  
11 the plant to Williamsburg and would no longer be  
12 using the Gloucester plant."

13 Q. And you interviewed Bill Robinson, and  
14 what did he tell you?

15 A. "I helped break down the paint booth  
16 and load into the truck. Brooks told me that they  
17 were going to start building all of the dock boxes  
18 in Williamsburg." On 2-10-90 Robinson further  
19 stated that he helped Brooks and Dively hide 14  
20 pedestals worth \$700 each in a warehouse behind Sea  
21 Tech where Dively kept some of his personal  
22 equipment. It was later learned that these  
23 pedestals were that which were shipped to Shark  
24 Island Yacht Club. Sea Tech never received any  
25 compensation for these items.

1 Q. When you interviewed Mr. Ingles on  
2 April 12 you told Mr. Ingles that in your judgment  
3 the removal of the tools and equipment from Sea Tech  
4 was pure larceny?

5 A. Yes, sir.

6 Q. Now, prior to the indictments you met  
7 with Mr. Shaw and Mr. Ingles in Mr. Shaw's office,  
8 correct?

9 A. Yes, sir.

10 Q. And during those meetings Mr. Ingles  
11 advised you about some handwritten memorandum  
12 prepared by Mr. Dively requesting a bill to Marina  
13 Tech?

14 A. Yes, sir. He had told us about -- I  
15 never personally saw it. I think he gave those  
16 right to Mr. Shaw.

17 Q. So you knew about those pre-indictment?

18 A. Yeah. He had mentioned that in the  
19 meeting that we had.

20 Q. And you had asked Mr. Ingles who owned  
21 the company and he told you he owned the company,  
22 correct?

23 A. Yes, sir.

24 Q. And he also told you and Mr. Shaw  
25 before the indictments that he had offered ownership

W. Adams - Cross

1 of half the company at one time to Mr. Dively with  
2 the stock option, correct?

3 A. Yes, sir, that was discussed.

4 Q. And he told you that before the  
5 indictment?

6 A. Yes, sir.

7 Q. During the course of your  
8 investigation, sir, you saw a check that Shark  
9 Island Yacht Club had written to Sea Tech that had  
10 been endorsed over?

11 A. Yes, sir.

12 Q. And you had that in your investigative  
13 file today, correct?

14 A. I have a copy of it, yes, sir.

15 Q. And regarding Shark Island it was and  
16 is your opinion that there was probable cause to  
17 indict Mr. Dively for embezzlement of that?

18 A. Yes.

19 Q. You also have in your investigative  
20 file a proposal for Dock of the Bay?

21 A. Yes, sir.

22 Q. And did you investigate whose address  
23 was on top of that proposal and whose was it?

24 A. It was Mr. Dively's home address.

25 Q. And based upon your investigation,

W. Adams - Redirect

1 Mr. Adams, it was and is your opinion there was  
2 probable cause to indict Mr. Dively for embezzlement  
3 of Dock of the Bay funds?

4 A. Yes, sir.

5 Q. You were with Mr. Colton when  
6 Mr. Dively was picked up on the indictments?

7 A. Yes, sir.

8 Q. Was Mr. Dively calm?

9 A. Yes, sir, until we showed him the  
10 indictments. The search warrant he wasn't all that  
11 worried about. His demeanor never was outraged or  
12 anything at that time.

13 MR. RUSSELL: Thank you, sir.

14 REDIRECT EXAMINATION

15 BY MR. BAYLISS:

16 Q. Investigator Adams, Mr. Russell asked  
17 you about your opinion was and is. You testified on  
18 direct that there came a time your opinion changed,  
19 correct?

20 A. Yes, sir.

21 Q. So your opinion was and is is not  
22 right, is it? It was but it not is?

23 A. As opposed to what?

24 Q. Is your -- he said your opinion was and  
25 is, is being present tense and was being past



W. Adams - Redirect

1 tense. In fact, there came a time after you had a  
2 chance to do more than listen to Mr. Ingles that  
3 your opinion changed?

4 MR. RUSSELL: I have to object for  
5 leading.

6 THE COURT: He's bringing up things  
7 that you brought up on cross. Mr. Russell, please,  
8 let him go ahead and answer the question, please,  
9 sir.

10 BY MR. BAYLISS:

11 Q. Mr. Russell asked you was and is, that  
12 intimates past and present.

13 THE COURT: He has a right to clear  
14 that up.

15 BY MR. BAYLISS:

16 Q. When you first interviewed Mr. Ingles  
17 all of your information to gather your opinion to go  
18 to the Grand Jury -- and you testified at the Grand  
19 Jury, didn't you?

20 A. Uh-huh.

21 Q. All of your opinion was based on one  
22 thing, talking to Mr. Ingles, right?

23 A. And the three witnesses that I talked  
24 to at Sea Tech also.

25 Q. But you hadn't talked to anyone else

1 like Trudy Pells or Jane Hogge?

2 A. No, sir.

3 Q. And you hadn't met with Officer Colton  
4 and gotten involved with his discussions with other  
5 witnesses either, correct?

6 A. What was the date on that?

7 Q. The indictments were May the 9th -- May  
8 27th. I'm sorry.

9 A. The letter I had written to him --  
10 yeah, I had talked to Will Colton on July 5th.

11 Q. I'm talking about before you went to  
12 the Grand Jury on May the 7th your entire -- the  
13 entire source of your information was talking to the  
14 three employees that you just mentioned and Mac  
15 Ingles?

16 A. Yes, sir.

17 Q. And then once you had a chance to do a  
18 thorough investigation of people other than Mac  
19 Ingles your opinion changed?

20 MR. BUGG: Your Honor, that is a  
21 leading question of the worst order. This is his  
22 witness.

23 THE COURT: Mr. Bayliss, rephrase your  
24 question.

25 BY MR. BAYLISS:

W. Adams - Redirect

1 Q. Did there come a time that after you  
2 had a chance to investigate that your opinion  
3 changed?

4 A. Yes, it did. I was also asking  
5 Mr. Shaw for his opinion also in that letter.

6 Q. But there came a time when your opinion  
7 changed?

8 A. Yes.

9 Q. And we've already gone over that and  
10 your memo of July 5, 1990, is that about the time  
11 that your opinion changed?

12 A. Yes, sir.

13 Q. So it isn't true that your opinion was  
14 and is, correct?

15 A. Can you rephrase that was and is?

16 Q. Your opinion changed July 5 and it  
17 hasn't changed since then, has it?

18 A. When I saw the stock certificates I was  
19 ready to go ahead with the trial.

20 Q. And that's all you saw about ownership?

21 A. Yes, sir.

22 Q. And ownership was important to you?

23 A. Yes, sir.

24 Q. Let's get your book out and let me ask  
25 you if Mr. Ingles ever showed you the following

1 exhibits. Turn to Exhibit 1. They are the stock  
2 certificates. He showed you that, right, that's  
3 what he showed you?

4 A. Your question is Mr. Ingles showed me  
5 this?

6 Q. Or Mr. Shaw.

7 A. Mr. Shaw showed me this.

8 Q. Turn to Number 2. Did he show you that  
9 K-1 that showed him being -- it's not Number 2.  
10 Let's go to Number 3. Did he show you the option  
11 agreement?

12 A. Mr. Shaw showed me this also.

13 Q. Did you ever ask Mr. Ingles -- you  
14 testified on cross-examination about this option  
15 agreement that he told you about it.

16 A. He had told us in a meeting with  
17 Mr. Shaw.

18 Q. What did he tell you about whether it  
19 was ever exercised?

20 A. I don't remember. I don't remember.

21 Q. You don't have a recollection one way  
22 or the other?

23 A. No. I remember he said there was one  
24 but I don't remember. It was turned over to  
25 Mr. Shaw.



W. Adams - Redirect

1           Q.       What did Mr. Ingles tell you about the  
2       opinion of the company from beginning to end?

3           A.       That it was his 100 percent.

4           Q.       Turn to Exhibit 4. Have you ever seen  
5       that K-1 that shows Bob Dively is a 50 percent  
6       stockholder?

7           A.       No. I don't remember seeing this.

8           Q.       Turn to Exhibit 6. Did he ever show  
9       you that letter where Jim Eaton was advised to  
10      change the ownership from 50/50 to a hundred percent  
11      and zero?

12                   MR. RUSSELL: What's the date of that  
13      letter?

14                   THE COURT: September 16th, 1990.

15                   MR. BAYLISS: Six months before the  
16      criminal prosecution.

17                   MR. RUSSELL: Your Honor, with regard  
18      to the date of the indictment it's substantially  
19      after. I don't know what time frame Mr. Bayliss is  
20      trying to ask the witness.

21                   THE COURT: I think he's trying to ask  
22      him whether these items were shown to him prior to  
23      indictment.

24                   MR. BAYLISS: I'm asking prior to  
25      trial.

W. Adams - Redirect

1 MR. RUSSELL: That's what I want to  
2 clear up.

3 THE WITNESS: No, sir.

4 BY MR. BAYLISS:

5 Q. Turn to Exhibit 7. Turn to Page 2 of  
6 Exhibit 7. This is Mac Ingles' financial statement  
7 that it's been testified he gave to a bank. Did  
8 Mr. Shaw or Mr. Ingles ever show you his financial  
9 statement where Mr. Ingles represented that he owned  
10 15 shares of Sea Tech in 1988?

11 MR. RUSSELL: I object to the question  
12 as phrased. Certainly that fact is in dispute.  
13 Mr. Ingles has explained it and it is a leading  
14 question.

15 THE COURT: The fact may be in dispute  
16 but the question as to whether Mr. Ingles showed him  
17 that or someone else is not in dispute.

18 MR. RUSSELL: I don't object to that  
19 but that's not the question.

20 BY MR. BAYLISS:

21 Q. Did Mr. Ingles or Mr. Shaw ever share  
22 this financial statement with you prior to the  
23 criminal trial which showed on Page 2 that he owned  
24 15 shares of Sea Tech?

25 A. No, sir.

W. Adams - Redirect

1           Q.       Flip over to the first pink tab and  
2       this is the next year's financial statement. Did  
3       Mr. Ingles or Mr. Shaw ever share with you this  
4       financial statement that showed that Mr. Ingles  
5       owned 15 shares of Sea Tech?

6           A.       No, sir.

7           Q.       Flip if you will to Exhibit 18. Did  
8       Mr. Ingles or Mr. Shaw ever share with you the K-1  
9       for Mac Ingles that showed he only owned 50 percent  
10      of Sea Tech at any time?

11          A.       No, sir. I never saw this.

12          Q.       All you saw was the stock certificate?

13          A.       Yes.

14          Q.       Haven't seen any of these things that I  
15      put in front of you?

16          A.       Yes, sir -- no, sir.

17          Q.       Is that one of the reasons you  
18      questioned his credibility?

19          A.       Stock certificates were the main thing  
20      in my mind.

21          Q.       Has Mr. Ingles or Mr. Shaw ever told  
22      you that this civil matter was tried and that the  
23      Court has ruled that they were 50/50 stockholders,  
24      have they ever told you that?

25          A.       No, sir.

1 MR. BAYLISS: That's all I have,  
2 Judge.

3 MR. RUSSELL: No questions, Your  
4 Honor.

5 THE COURT: Any further need for  
6 Mr. Adams?

7 MR. BAYLISS: No, sir.

8 THE COURT: Any further need for  
9 Mr. Adams?

10 MR. RUSSELL: No, sir.

11 THE COURT: You may have a seat in the  
12 courtroom or you may leave.

13 MR. BAYLISS: Investigator Colton.

14 MR. BUGG: Your Honor, may we approach  
15 the bench on this witness?

16 THE COURT: Yes, sir.

17 (A conference was held at the bench.)

18 MR. BUGG: We just had a bench  
19 conference, and for the record my objection to this  
20 witness' testimony went to the chronology of his  
21 involvement in the case and I object to it, and I  
22 understand Your Honor has overruled that objection.  
23  
24  
25



W. Colton - Direct

1                    WILLIAM COLTON, called as a witness by  
2     and on behalf of the Plaintiff, having been first  
3     duly sworn, was examined and testified as follows:

4  
5                    DIRECT EXAMINATION

6     BY MR. BAYLISS:

7                Q.        Would you state your name and  
8     occupation, sir.

9                THE COURT:    For the reasons stated at  
10    the bench.

11               MR. BUGG:    I understand, Your Honor.

12               THE WITNESS:    My name is William  
13    Colton.    I'm a special agent with the Virginia State  
14    Police.

15     BY MR. BAYLISS:

16               Q.        What is your background?

17               A.        I've been with the state police for 21  
18    years.    I have a college degree.    I was a trooper  
19    for eight years.    I've been working investigations  
20    since 1978.    I'm primarily white collar  
21    investigations since 1985.

22               Q.        Are you a certified public accountant?

23               A.        No, sir.

24               Q.        Do you have any accounting background?

25               A.        I have some college courses in

W. Colton - Direct

1 accounting and my title with the state police,  
2 special agent, accounting.

3 Q. Did you become involved in the  
4 investigation on behalf of the Commonwealth of  
5 Virginia against Mr. Bob Dively?

6 A. Yes, sir.

7 Q. And when do your notes reflect you  
8 became involved?

9 A. My first involvement was May the 3rd,  
10 1990.

11 Q. May the 3rd, 1990?

12 A. Yes, sir.

13 Q. That was prior to the time Mr. Dively  
14 was indicted on May the 7th?

15 A. Yes, sir.

16 Q. And who did you meet with when you  
17 first became involved?

18 A. I think I received a phone call from  
19 either the sheriff's office or the Gloucester  
20 Commonwealth Attorney's office. I'm not sure which,  
21 but the gist of it was to meet with Investigator  
22 Adams.

23 Q. And when did you meet with Investigator  
24 Adams?

25 A. That was May the 3rd.

W. Colton - Direct

1 Q. Now, during the course of your work  
2 tell us just in general what you did to help with  
3 the investigation?

4 A. Well, the initial meeting with  
5 Investigator Adams was he came over here to James  
6 City County. Being a Gloucester officer he didn't  
7 have authority over here and requested my assistance  
8 in serving some arrest warrants on Mr. Dively and  
9 executing a search warrant on the property of Marina  
10 Tech which we did that day.

11 Q. Now, did there come a time that you  
12 later conducted interviews to prepare and help the  
13 Commonwealth's Attorney investigate the case?

14 A. Yes, sir.

15 Q. Did you have any discussions with Mac  
16 Ingles during this period of time that you were  
17 investigating the case?

18 A. Yes, sir.

19 Q. How would you describe Mac Ingles'  
20 involvement in the investigation of this case?

21 MR. BUGG: Your Honor, that's a  
22 conclusion on his part.

23 THE COURT: I think the term  
24 involvement, Mr. Bayliss --

25 BY MR. BAYLISS:

W. Colton - Direct

1 Q. Tell me what Mac Ingles did with  
2 respect to your investigation of the case.

3 A. I met with Mr. Shaw in his office.  
4 Mr. Shaw is the Gloucester County Commonwealth's  
5 Attorney. He was the Commonwealth Attorney who  
6 would be prosecuting the criminal case. I met with  
7 him, received a briefing from him as well as from  
8 Mr. Ingles who was present. The initial meetings  
9 were to familiarize me with the case, the  
10 investigation, the details of it. It was a  
11 complicated matter and to discuss the incidents that  
12 were alleged in the embezzlement crime, discuss how  
13 to procure the evidence needed to prosecute the  
14 case, what the evidence was, and during this time  
15 Mr. Ingles was an active participant in the  
16 discussion.

17 Q. Now, turn if you would in that top book  
18 in front of you, the black book, turn if you would  
19 to Exhibit 25. Can you identify that?

20 A. Yes, sir. This is a photocopy of a  
21 handwritten note that I wrote to Mr. Shaw.

22 Q. Would you read it in the record?

23 A. Yes, sir. It's dated 6-29, "Dear  
24 Bill" -- that would be Bill Shaw, the Commonwealth  
25 Attorney -- "Since I won't be around next week and

W. Colton - Direct

1 VSP typing can be slow I thought I would give you  
2 the, parenthesis, dubious benefit of my handwritten  
3 interviews with Hogge and Pells. I was not able to  
4 catch Cox at home. You will find some statements  
5 that will not be to Mr. Ingles' liking. Please do  
6 not give him copies of this material. You know how  
7 the VSP can be. I will be back to work on July 9th,  
8 Will."

9 Q. What did you mean when you were telling  
10 Bill Shaw, you will find some statements that will  
11 not be to Mr. Ingles' liking?

12 A. I meant that the investigation as I was  
13 conducting it was leading to -- I'm trying to think  
14 of the right words. I was not finding evidence that  
15 would go forward in the prosecution of Mr. Dively.

16 Q. Well, did you care whether Mr. Ingles  
17 liked it or not?

18 A. Well, in the sense that he was the  
19 complainant and I was trying to do a good job, that  
20 sort of thing. In that way I cared. In a  
21 professional way, it's neither here nor there.

22 Q. Were you seeking the truth?

23 A. Yes, sir.

24 Q. And that's what you always do?

25 A. Yes, sir.



W. Colton - Direct

1 Q. Did you come to a conclusion about the  
2 truth?

3 A. Yes, sir.

4 MR. BUGG: Your Honor, the same reason  
5 I expressed before. I object to that testimony in  
6 asking a witness. In addition his conclusion about  
7 truth, Your Honor, is simply improper.

8 THE COURT: I sustain the objection.

9 MR. BAYLISS: I move to introduce  
10 Exhibit 25.

11 THE COURT: Any objection to it or do  
12 you want to note your objection?

13 MR. BUGG: I don't have an objection to  
14 it, Your Honor.

15 THE COURT: Introduced and marked as  
16 Plaintiff's Exhibit 25. Is that all of 25 or just  
17 one page?

18 MR. BAYLISS: All of 25.

19 THE COURT: Will be introduced and  
20 marked as such.

21 (The documents referred to were marked  
22 by the Court as Plaintiff's Exhibit 25, and received  
23 into evidence.)

24 BY MR. BAYLISS:

25 Q. That's dated June 29, 1990?

W. Colton - Direct

1 A. Yes, sir.

2 Q. Turn if you would to Exhibit 27. Now,  
3 that letter has already been introduced. That's the  
4 letter from Mr. Shaw that Mr. Adams read in the  
5 record that says both of you have indicated your  
6 opinion that the cases were civil rather than  
7 criminal. Did there come a time that you had a  
8 conversation with Bill Shaw about what you had found  
9 out in this case?

10 A. I can't specifically recall one.

11 Q. Did there come a time when you had  
12 shared your thoughts with Mr. Adams?

13 A. Yes, sir.

14 Q. Had you ever received a letter like  
15 this, this is addressed to both you and Adams?

16 A. Yes, sir. I received one of these  
17 letters. I received this letter.

18 Q. In your entire history have you ever  
19 received a letter --

20 A. Yes, sir.

21 Q. What opinion did you share with  
22 Investigator Adams?

23 MR. BUGG: What he shared with Officer  
24 Adams is not appropriate.

25 BY MR. BAYLISS:

W. Colton - Direct

1 Q. What did you tell --

2 THE COURT: He is asking what he told.

3 BY MR. BAYLISS:

4 Q. What did you tell -- after the July  
5 time frame, what did you tell Investigator Adams?

6 A. I told him that I didn't think this  
7 case rose to the level of a criminal matter.

8 Q. Did there come a time when you received  
9 a phone call from Mr. Ingles to discuss that?

10 A. Yes, sir.

11 Q. And tell us about that.

12 A. Several times during the course of the  
13 investigation Mr. Ingles had either spoken to me  
14 personally or had telephoned me to deliver material  
15 for the investigation and frequently -- several  
16 times there were verbal exchanges where he brought  
17 to my attention something that he thought would  
18 further the investigation. There came a date, and I  
19 don't remember when, it was in this time frame, when  
20 I received a phone call from him and in the course  
21 of the phone call he said something to the effect  
22 of, you don't think this is a criminal case, do you,  
23 and I said, no, sir, I don't. There was some  
24 conversation about, well, I guess we have difference  
25 of opinions or that sort of thing.

W. Colton - Cross

1 Q. From that date forward did you ever,  
2 ever hear again from Mr. Ingles?

3 A. After that date I may have had some  
4 conversation or met with him but after that date  
5 there was never any delivery of any more material or  
6 anything of that nature.

7 Q. Were you asked by the Commonwealth to  
8 testify in this trial?

9 A. Which trial?

10 Q. The criminal trial, not today.

11 A. No, sir.

12 Q. You were not asked to testify in the  
13 criminal trial?

14 A. No, sir.

15 MR. BAYLISS: No further questions.

16 CROSS-EXAMINATION

17 BY MR. BUGG:

18 Q. Officer Colton, did you talk to four  
19 people in addition to Mr. Ingles, Al Brooks?

20 A. Yes, sir.

21 Q. And, in fact, when you talked to him he  
22 was working for Bob Dively?

23 A. Yes, sir.

24 Q. Talked to Jane Hogge?

25 A. Yes, sir.



L. Payparis - Direct

1 Q. During that 23 years have you had  
2 occasion to learn of Mr. Bob Dively's general  
3 reputation in the community?

4 A. Yes.

5 Q. What is that reputation?

6 A. Family man. We met through my sister's  
7 little girl and his little girl at Walsingham and  
8 through some of the parents at the school. He  
9 frequents my restaurant and he's a regular customer  
10 there so we got to become very good friends.

11 Q. And not your own personal opinion of  
12 him, through your knowledge of the community, have  
13 you learned about his reputation?

14 A. Yes.

15 Q. And what is that knowledge?

16 A. He's a good standing businessman.

17 Q. Now, turn if you would to Exhibit 31.  
18 These newspaper articles have been introduced into  
19 evidence previously. Did there come a time when you  
20 learned of any criminal prosecution against Bob  
21 Dively?

22 A. Yes. I read it in the Virginia  
23 Gazette.

24 Q. Did there come a time that subsequent  
25 to reading that article in the Virginia Gazette that

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L. Payparis - Cross

1 based upon your knowledge of Bob's reputation in the  
2 community that that reputation changed?

3 A. Yes, it did.

4 Q. Tell us about that.

5 A. Well, Bob -- first of all, Bob was  
6 invited to a lot of our local -- a lot of our  
7 private functions at our business and met a lot of  
8 my personal friends, and when this article first  
9 came out at the restaurant some of these local  
10 professionals that patronize our place brought up  
11 this article that they read and asked me about it  
12 since they met him for the first time and they were  
13 asking me basically, your friend has been in the  
14 paper. What's going on and stuff like that, and  
15 have you read about your friend. So yes, we did  
16 hear lots for that first week.

17 Q. Did you learn Bob was later acquitted?

18 A. Yes, we did.

19 MR. BAYLISS: That's all I have.

20 CROSS-EXAMINATION

21 BY MR. RUSSELL:

22 Q. Good morning, sir. You and Mr. Dively  
23 are currently close friends?

24 A. Yes, we are.

25 Q. And notwithstanding this article you

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1 THE COURT: I meant an inference in my  
2 mind, not to the jury's mind. It's up to them to  
3 decide the case, not me.

4 MR. BUGG: Last thing, Your Honor.

5 THE COURT: Defamation of words.

6 MR. BUGG: This has to do with the  
7 defamation claim. Under Gazette versus Harris which  
8 is a 1985 Virginia case.

9 THE COURT: Is that the case about  
10 being the truth?

11 MR. BUGG: That case sets up the  
12 negligence standard, Your Honor, for defamation  
13 cases. It says, Page 724, "We hold, therefore, that  
14 an action brought by a private individual to recover  
15 actual compensatory damages for defamatory  
16 publication, the plaintiff may recover upon proof by  
17 a preponderance of the evidence that the publication  
18 was false and that the defendant either knew it to  
19 be false or, believing it to be true, lacked  
20 reasonable grounds for such belief or acted  
21 negligently in failing to ascertain the facts upon  
22 which the publication was based.

23 "Under this standard truth is no  
24 longer an affirmative defense to be established by  
25 the defendant. Instead the plaintiff must prove

1 falsity because he is required to establish  
2 negligence with respect to such falsity.

3 "In addition, we hold that such  
4 liability may be based upon negligence, whether or  
5 not the publication in question relates to a matter  
6 of public or general concern."

7 That's the law in Virginia, Your Honor,  
8 and I submit to Your Honor, that with the evidence  
9 there is in this case as a matter of law there is a  
10 reasonable basis to believe that this man was a  
11 thief as has been alleged Mr. Ingles said or that he  
12 was a crook or that he might be convicted of those  
13 things.

14 MR. BAYLISS: Might be, how about was  
15 convicted.

16 THE COURT: Let me ask you, I tried a  
17 case out of Henrico County involving a preacher up  
18 there which was a very famous preacher -- what's his  
19 name, Wong -- in which he said to the plaintiff --  
20 he is the preacher and this lady is in his  
21 congregation, and he says to her at a meeting with  
22 some other people, my dear, the devil has gotten  
23 into you. How in the world is that plaintiff ever  
24 going to prove that or how is he ever going to prove  
25 that it's true or false? Those are the type of



1 statements that people make that you are talking  
2 about, but when you make a statement that Mr. Ingles  
3 has alleged to have made, not a statement, many  
4 statements, there have been at least five witnesses  
5 who have appeared in here who have testified  
6 unequivocally that during the period of time shortly  
7 after May the 9th, somewhere in that neighborhood,  
8 on March the 9th Mr. Ingles either by telephone or  
9 in person made statements to them concerning this  
10 man being handcuffed, he's been convicted and so on  
11 down the line, and I overrule your motion, sir.

12 MR. BUGG: One further thing, the test  
13 for punitive damages under defamation is set forth  
14 in the same case, basically what it requires is  
15 what's called New York Times Malice.

16 THE COURT: You are not going to have  
17 to argue that with me. I'm glad to listen to  
18 Mr. Bayliss but the defamation part about --

19 I'm not going to rule on that. Let me  
20 hear you.

21 MR. BUGG: New York Times Malice is  
22 required to recover punitive damages in defamation  
23 cases, Your Honor, and I submit to Your Honor that  
24 New York Times Malice has not been shown. New York  
25 Times Malice is you know it's wrong or you have

1 reckless disregard for whether it's true. I submit  
2 the evidence is insufficient to support that.

3 THE COURT: Mr. Bayliss?

4 MR. BAYLISS: Actual malice is what he  
5 talks about. It's constitutional actual malice is  
6 what these cases say. Taking light -- taking the  
7 evidence in the light most favorable to the  
8 plaintiff at this point in time which you must do if  
9 this isn't a case in New York Times versus  
10 Sullivan --

11 MR. BUGG: I didn't mention one, it's  
12 also clear and convincing burden of proof.

13 THE COURT: I understand that. That's  
14 for the jury, the clear and convincing proof.

15 MR. BAYLISS: I forget which one it  
16 was, but Frieda Cox said that Mr. Ingles subsequent  
17 to at that luncheon meeting said -- and dropped the  
18 F word and said I'm going to bury that F bastard.

19 THE COURT: Bury that fucking bastard.

20 MR. BAYLISS: And he said that, and  
21 it's unrefuted and if that doesn't show actual  
22 malice about what Mr. Ingles wanted to do nothing  
23 else does, and, Your Honor, this is a case that is  
24 intentional and actual and malicious and everything  
25 there is to do with it.



1 THE COURT: Do you have anything  
2 further to say?

3 MR. BUGG: No, sir.

4 THE COURT: Overrule your motion.  
5 Punitive damages applies to that. We're about five  
6 minutes to 12:00. Do you have anything else,  
7 Mr. Bugg?

8 MR. BUGG: No, sir. Let's go to  
9 lunch.

10 THE COURT: Bring the jury in.  
11 (The jury was returned to the  
12 courtroom.)

13 THE COURT: Again, ladies and  
14 gentlemen, I admonish you not to discuss the case or  
15 permit anyone to discuss it with you or be in the  
16 presence of anyone discussing it.

17 (The jury withdrew from the courtroom.)

18 (A luncheon recess was taken at this  
19 time.)

20 THE COURT: Gentlemen, prior the  
21 sheriff has advised me that one member of the jury  
22 has a very important engagement that he has tonight  
23 and he has to leave here by 5:30. Please if you can  
24 govern yourself accordingly so we can go along about  
25 that time. Bring the jury in.

A. Anderson - Direct

1 (The jury was returned to the  
2 courtroom.)

3 MR. BUGG: Call Alvin Anderson, Your  
4 Honor.

5 THE COURT: Is he going to be referring  
6 to any of these exhibits?

7 MR. BUGG: Just a couple.

8 THE COURT: I just want to know whether  
9 to move them or leave them there.

10 MR. BUGG: Leave them.

11  
12 ALVIN ANDERSON, called as a witness by  
13 and on behalf of the Defendant, having been first  
14 duly sworn, was examined and testified as follows:

15  
16 DIRECT EXAMINATION

17 BY MR. BUGG:

18 Q. Would you state your name?

19 A. Alvin Powers Anderson.

20 Q. What is your profession?

21 A. I'm an attorney at law.

22 Q. Would you briefly give the jury a  
23 rundown on your educational background?

24 A. I attended College of William & Mary.  
25 I graduated in 1970. I then attended Marshall-Wythe

A. Anderson - Direct

1 School of Law at the College of William & Mary and  
2 graduated from there in 1972.

3 Q. And after your graduation from law  
4 school could you bring the jury up to date on your  
5 legal experience up to the present?

6 A. In October of 1972 I went into practice  
7 with my uncle, Harper Anderson, and I practiced with  
8 him until his death in the late 1980s and we've had  
9 various other attorneys associated with our firm  
10 during the past 20 years and the firm is currently  
11 Anderson, Frank & Davis.

12 Q. Do you have a criminal practice,  
13 criminal law practice?

14 A. I do not.

15 Q. Are you familiar with the basic  
16 concepts of criminal law?

17 A. I studied criminal law as part of the  
18 law school curriculum and studied it for the Bar  
19 exam and passed both.

20 Q. Are you familiar with the elements of  
21 embezzlement?

22 A. Yes, sir.

23 Q. And elements of larceny?

24 A. Yes, sir.

25 Q. Are you familiar with the ramifications

A. Anderson - Direct

1 of criminal conduct across the State lines?

2 A. Yes.

3 Q. What does that mean to you?

4 A. Typically when criminal conduct occurs  
5 across state lines or there's any use of the mail in  
6 the conduct it constitutes a Federal offense in  
7 addition to State offenses.

8 Q. Were you consulted or retained by Mac  
9 Ingles in a matter involving Mr. Dively?

10 A. Yes, sir.

11 Q. When were you first consulted or  
12 contacted?

13 A. I believe it was March 20th of 1990.

14 Q. Briefly what was the purpose of his  
15 consulting you?

16 A. Mr. Ingles called me about a request  
17 for a temporary restraining order against  
18 Mr. Dively.

19 Q. In the course of preparation for the  
20 receipt of that temporary restraining order did  
21 Mr. Ingles acquaint you with any conduct of  
22 Mr. Dively before he left Sea Tech?

23 A. Yes, he did.

24 Q. What did he tell you about that?

25 A. Mr. Ingles provided to me a copy of

A. Anderson - Direct

1 some invoices that appeared to be on Marina  
2 Technology stationery that were issued during the  
3 course of Mr. Dively's employment. He provided --

4 Q. Let me stop you there. What did you  
5 understand Mr. Dively's position to be with Sea Tech  
6 while he was there?

7 A. I understood that he was an officer of  
8 the corporation and a full-time employee.

9 Q. Do officers of corporations have any  
10 duties to the corporation?

11 A. Every officer of the corporation has a  
12 fiduciary duty to the corporation.

13 Q. Would you explain that to the jury?

14 A. That's a position.

15 MR. BAYLISS: I object. Fiduciary  
16 duties have no bearing in this case. Fiduciary  
17 duties have no bearing in this case. The fact that  
18 he has or has not a fiduciary duty doesn't have  
19 anything to do with whether someone gets indicted or  
20 not.

21 MR. BUGG: The tradition of trust that  
22 an officer is in is an essence of embezzlement.

23 THE COURT: You don't have to be a  
24 fiduciary to embezzle.

25 MR. BUGG: It is a position of trust



A. Anderson - Direct

1 which is the type of position that embezzlement  
2 occurs, Your Honor.

3 THE COURT: I'll let him answer.

4 BY MR. BUGG:

5 Q. In layman's terms what are an officer's  
6 duties to a corporation?

7 A. An officer of a corporation has a duty  
8 to his corporation to be fair in dealing with the  
9 corporation. An officer occupies a very special  
10 relationship to the corporation because he deals  
11 with the public on the outside and he deals with the  
12 corporation on the inside.

13 Q. You mentioned Marina Tech. What did  
14 you understand that to be?

15 A. After speaking with Mr. Ingles I  
16 understood Marina Tech to be a corporation which  
17 Mr. Dively had formed.

18 Q. And did you understand how much of it  
19 he owned?

20 A. Of Marina Tech?

21 Q. Yes, sir.

22 A. I did not understand that anyone had  
23 anything to do with Marina Tech other than  
24 Mr. Dively.

25 Q. Now, did Mr. Ingles share with you some

A. Anderson - Direct

1 documents from records of Sea Technology and other  
2 entities?

3 A. Yes, sir, he did.

4 Q. What did he share with you?

5 A. There was a ream of paper that he  
6 brought over. The things that I remember are  
7 invoices that were generated on Marina Technology  
8 stationery, a canceled check that was drawn on Shark  
9 Island.

10 Q. Let me stop you about the invoices with  
11 Marina Tech. When did you understand that those  
12 invoices were generated with relationship to before  
13 and after Mr. Dively left Sea Tech?

14 A. January and February of 1990 and  
15 Mr. Dively I believe left in March of 1990.

16 Q. What other documents did you see? You  
17 said the invoices and a check.

18 A. There was a canceled check drawn on the  
19 account of Shark Island that was payable to Sea  
20 Technology and endorsed from Sea Technology to  
21 Marina Technology by what appeared to be  
22 Mr. Dively's signature.

23 Q. Did that have some significance to you?

24 A. Yes, sir, it did.

25 Q. What was it?

A. Anderson - Direct

1 reach a reasonable conclusion about whether conduct  
2 is criminal.

3 THE COURT: You may hope that, but I  
4 can assure you from sitting on this bench for 18  
5 years it ain't so. It ain't so. I've seen too many  
6 of them come and go who know about as much about  
7 criminal law as a pig knows when Sunday comes. I  
8 still say I'll let him testify that Ingles came to  
9 him and he was told that information and based on  
10 that information he recommended that Ingles see the  
11 Commonwealth's Attorney. If you want that you can  
12 have it. If you don't want that --

13 MR. BUGG: I'll take what you can give  
14 me.

15 THE COURT: Bring the jury in.  
16 (The jury was returned to the  
17 courtroom.)

18 BY MR. BUGG:

19 Q. Mr. Anderson, were you aware of whether  
20 Mr. Ingles went on a trip to some marinas?

21 A. He went on a trip before the hearing to  
22 two marinas I believe and took some photographs and  
23 returned with the photographs.

24 Q. The photographs will come in later but  
25 do you remember looking at those photographs?

A. Anderson - Direct

1 A. Yes, sir, I do.

2 Q. Do you remember generally what they  
3 showed?

4 A. The thing I remembered was the  
5 photographs showed the label on the marine pedestals  
6 that said Sea Technology.

7 Q. What information did you review from  
8 Mr. Ingles? You told us about invoices and checks  
9 and you've looked at photographs and you discussed  
10 the case with Mr. Ingles. Did he give you any other  
11 information?

12 A. There was some witness statements,  
13 typewritten witness statements, that he gave us that  
14 we reviewed. We also interviewed several of the  
15 witnesses before the hearing. There was a lot of  
16 documentation in connection with the case that he  
17 gave us that we reviewed.

18 Q. Based on your review of all the  
19 information that Mr. Ingles gave you and witnesses  
20 you talked to and the documents you look at, did you  
21 make any recommendations to him about what he should  
22 do with that information?

23 A. I recommended that he should share that  
24 information with the Office of the Commonwealth  
25 Attorney. I determined after speaking with the

A. Anderson - Direct

1 local Commonwealth Attorney and the Assistant U.S.  
2 Attorney that the Gloucester County attorney would  
3 be the proper forum to be lodging a report with.

4 Q. Who spoke with the U.S. Attorney and  
5 the Williamsburg City Attorney General?

6 A. I did. I spoke with Jeff Fairbanks,  
7 the Commonwealth's Attorney here in Williamsburg,  
8 and Robert Bradingham, the Assistant U.S. Attorney  
9 in Norfolk.

10 Q. Do you remember when it was from a  
11 review of your billing records that you told  
12 Mr. Ingles to consult the Gloucester County  
13 Commonwealth's Attorney?

14 A. I've got those records over here.

15 Q. I can hand you one right here.

16 A. That's okay. I've got them here. I  
17 spoke with Mr. Jeff Fairbanks, the Commonwealth's  
18 Attorney in Williamsburg, on April the 9th, 19 --

19 MR. BAYLISS: The fact he spoke to him  
20 is all he can say.

21 THE COURT: He asked what date.

22 THE WITNESS: I spoke with Jeff  
23 Fairbanks, the Commonwealth's Attorney here in  
24 Williamsburg, on April 9th, 1990. I spoke with Brad  
25 Bradingham at the U.S. Attorney's Office in Norfolk



A. Anderson - Direct

1 that same day, and then my billing records indicate  
2 that I had a conversation with Mac Ingles  
3 immediately after that on the same day.

4 MR. BUGG: Approach the bench.

5 (A conference was held at the bench.)

6 BY MR. BUGG:

7 Q. Mr. Anderson, I want to hand you what's  
8 been marked as Plaintiff's Exhibit Number 43. It's  
9 got some extraneous markings on the cover but can  
10 you identify that?

11 A. Yes, sir. This is the initial bill of  
12 complaint that we filed in this court for the  
13 temporary restraining order.

14 Q. How was that bill of complaint  
15 prepared? How did that --

16 A. There was an initial draft of the bill  
17 of complaint that was provided to us by Mr. Ingles'  
18 brother and associate, Mr. Breck Ingles. This was  
19 done because we were operating within a very, very  
20 short time period to get pleadings drafted. We made  
21 substantial changes in that initial draft based on  
22 the investigation and research we did within our  
23 office and ultimately signed this pleading and filed  
24 it in this court.

25 Q. Could I direct your attention to

A. Anderson - Direct

1 Paragraph 68 and 69 of that pleading?

2 A. Yes, sir.

3 Q. Would you read paragraph -- first of  
4 all, who are the defendants in the case?

5 A. The defendants are Robert C. Dively,  
6 Jr., Linda Lee Dively, Marina Technology,  
7 Incorporated and Alston G. Brooks.

8 Q. If you would read Paragraph 68 to the  
9 jury, please.

10 A. "The conduct of all defendants as  
11 aforesaid constitutes willful misconduct and a  
12 knowing violation of criminal law."

13 Q. And now read 69.

14 A. "The allegations set forth above reveal  
15 that the defendants and each of them obtained money  
16 from the plaintiff and Sea Tech by false pretenses,  
17 false representations and/or actual fraud and that  
18 these same monies were obtained by willful and  
19 malicious injury to the plaintiff and to Sea  
20 Technology."

21 Q. What is required of you as an attorney  
22 to sign such a pleading?

23 A. Basically the attorney is required to  
24 make an investigation and make some sort of good  
25 faith determination that the facts as alleged in the

A. Anderson - Direct

1 pleading are supported by that investigation.

2 Q. Did you see yourself that there was  
3 such a basis?

4 A. I wouldn't have signed the pleading  
5 otherwise.

6 Q. Did you communicate that to Mr. Ingles?

7 A. Yes, sir.

8 Q. Now, in connection with your  
9 investigation did Mr. Ingles provide you with a  
10 typed factual statement, summary of what he knew  
11 about the cases?

12 A. In conjunction with statements from  
13 other witnesses, yes, sir.

14 Q. Mr. Anderson, in connection with your  
15 investigation did Mr. Ingles give you any  
16 handwritten memos which he said were prepared by  
17 Mr. Dively and had to do with efforts to account for  
18 labor and materials and so forth?

19 A. Yes, sir, he did.

20 Q. I would ask the sheriff to hand you  
21 these that are marked Defendant's Exhibits 60 and 61  
22 and ask you if they are the originals of those  
23 documents?

24 A. Yes, sir.

25 Q. Were those exhibits in your file until

A. Anderson - Direct

1 roughly ten days or so ago?

2 A. Yes, sir.

3 Q. And who did you turn them over to?

4 A. I believe it was either you or  
5 Mr. Bayliss.

6 Q. Me. Now, did Mr. Ingles give you a  
7 factual recitation in memo form of things that he  
8 had learned about this case?

9 A. Yes, sir, he did.

10 Q. Mr. Anderson, that's a memo from which  
11 I've removed part of the information so that only  
12 the part that refers to those documents is there,  
13 but do you recognize that as part of the memo that  
14 Mr. Ingles gave you?

15 A. Yes, sir.

16 MR. BUGG: For the record, Your Honor,  
17 that memo has the number date A-000070 which  
18 Mr. McDaniel's office puts on there which indicates  
19 that it came from Mr. Anderson's file.

20 THE COURT: Has that already been  
21 introduced?

22 BY MR. BUGG:

23 Q. When did Mr. Ingles give you that?

24 A. This would have been given to us  
25 sometime after April 5th but before the hearing

A. Anderson - Direct

1 occurred. I say April 5th because in other portions  
2 of the memo that are not captured in this excerpt  
3 there are statements about certain things that  
4 happened on April the 5th, 1990.

5 MR. BUGG: I move the entry of all  
6 three of those, Your Honor.

7 THE COURT: The first two have already  
8 been put into evidence?

9 MR. BUGG: They are the originals. I  
10 would like the originals into evidence.

11 THE COURT: Substitute. They are  
12 already in evidence. I'm going to put them in  
13 evidence but have copies been put into evidence?

14 MR. BUGG: Your Honor, it's significant  
15 they are originals.

16 THE COURT: Mr. Bugg, you and I don't  
17 seem to be communicating, sir. I understand these  
18 are the originals but you've already introduced  
19 copies. Now you want to substitute the originals  
20 for the copies on the same numbers?

21 MR. BUGG: If they are exactly the  
22 same. I would rather have them introduced by those  
23 numbers.

24 THE COURT: Introduced and marked as  
25 Defendant's Exhibits 60 and 61.



A. Anderson - Direct

1 (The documents referred to were marked  
2 by the Court as Defendant's Exhibits 60 and 61, and  
3 received into evidence.)

4 BY MR. BUGG:

5 Q. Now, did you go with Mr. Shaw to any  
6 meetings with the Gloucester County -- I mean with  
7 Mr. Ingles with the Gloucester County Commonwealth's  
8 Attorney?

9 A. Yes, I did.

10 Q. Do you know when that was?

11 A. I had a meeting with Mr. Shaw, Mr. Mac  
12 Ingles and Mr. Breck Ingles in Mr. Shaw's office on  
13 May the 1st, 1990.

14 Q. And did Mr. Ingles say anything about  
15 those memos at that meeting?

16 A. Yes, sir, he did.

17 Q. What did he say?

18 A. Called the attention of the  
19 Commonwealth's Attorney to the existence of the  
20 memos and there was some discussion about it, but  
21 exactly what the discussion was I don't remember.

22 Q. Did the existence of those memos affect  
23 your advice to Mr. Ingles in your consult with the  
24 Commonwealth's Attorney?

25 A. No, sir.

A. Anderson - Direct

1 Q. Why not?

2 A. The memos appeared to be dated after  
3 the point in time when the invoices were generated  
4 on the part of Marina Tech. In addition, there was  
5 some concern over the pricing in these memos not  
6 being representative of the actual cost of the goods  
7 and from my perspective you don't write a memo like  
8 that and say, well, bill so and so. That's not the  
9 proper way to do that.

10 Q. Since Mr. Ingles first came to you have  
11 you learned there's a dispute between Mr. Dively and  
12 Mr. Ingles about whether Mr. Dively owns 50 percent  
13 of shares in Sea Tech or no shares in Sea Tech?

14 A. I learned of that dispute when I filed  
15 a responsive pleading to the case that was  
16 instituted in Gloucester County.

17 Q. If you had known about that dispute  
18 when you --

19 MR. BAYLISS: Your Honor, he is asking  
20 him to speculate.

21 THE COURT: That is asking for  
22 speculation.

23 MR. BUGG: Your Honor, Mr. Bayliss says  
24 Mr. Ingles had hidden things from Mr. Anderson and  
25 Shaw.

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1 THE COURT: We aren't talking about  
2 that. We are talking about what Anderson may or may  
3 not have done had he known certain things.

4 MR. BUGG: That's correct. We are  
5 entitled to ask him if he assumed Mr. Dively was a  
6 50 percent stockholder if it would have changed --

7 MR. BAYLISS: What he told him is  
8 important. The facts are important to this jury,  
9 not what he would have done if he had known  
10 whatever. If you open the door I'm going to ask him  
11 a lot of what ifs, what ifs.

12 THE COURT: Let's let him open it.

13 MR. BUGG: I'll move on.

14 BY MR. BUGG:

15 Q. Where do you live?

16 A. In James City County.

17 Q. What area?

18 A. The King's Mill development.

19 Q. Do you live anywhere near Mr. Dively?

20 A. I guess it's a mile and a half, maybe  
21 two miles.

22 Q. Do you ever have occasion to drive by  
23 his house?

24 A. Drive by his house frequently. My  
25 daughters play with two little girls that live down

A. Anderson - Cross

1 the street from his house.

2 Q. Have you ever driven by Mr. Dively's  
3 house and laughed at him?

4 A. Oh, absolutely not.

5 CROSS-EXAMINATION

6 BY MR. BAYLISS:

7 Q. Mr. Anderson, you signed your name to  
8 the pleadings that have been filed and marked as an  
9 exhibit, correct?

10 A. That's correct.

11 Q. And you are familiar with 8.01-271.1  
12 which is the Virginia sanctions statute, right?

13 A. Yes, sir.

14 Q. And you are familiar under 8.01-271.1  
15 that you have to make a thorough investigation, it  
16 has to be based upon facts before you sign your name  
17 to a pleading?

18 A. Yes, sir.

19 Q. And you are familiar with the fact that  
20 if you discover facts during the course of that  
21 lawsuit that you have an obligation as a lawyer to  
22 dismiss that pleading, correct?

23 A. Dismiss or amend, yes, sir.

24 Q. And if you don't then you violated and  
25 you have subjected yourself to sanctions?

A. Anderson - Cross

1 Q. Mr. Anderson, did you make any  
2 conclusions about the nature of the conduct of  
3 Mr. Dively after you reviewed the information  
4 supplied to you by Mr. Ingles, the documents and so  
5 forth and things that you have described?

6 A. Based upon our review we thought the  
7 conduct was such that it should be reported to the  
8 Commonwealth's Attorney's Office.

9 MR. BAYLISS: He's already said it  
10 once.

11 THE COURT: Call the jury back in.

12 (The jury was returned to the  
13 courtroom.)

14 BY MR. BAYLISS:

15 Q. Mr. Anderson, I want to clear up some  
16 confusion with your testimony a second ago. Isn't  
17 it true that you appeared in this court on April the  
18 11th, 1990 seeking an injunction?

19 A. That is correct.

20 Q. And isn't it true that this Court  
21 denied an injunction? Isn't it true that this Court  
22 would not enter an injunction as you requested?

23 A. It did not enter an injunction for  
24 every element that we requested, that is correct.

25 Q. And isn't it true that whatever was



A. Anderson - Cross

1 agreed to by counsel was outside the parameters of  
2 the Court? The Court didn't enter an order, did it?

3 A. The Court never entered a written order  
4 to that effect.

5 Q. And the Court did not enjoin the  
6 selling of the dock boxes, did they? The Court  
7 didn't enjoin the selling of the dock boxes?

8 A. The dock boxes, that is correct.

9 Q. Now, did you ever after April the 11th  
10 make another court appearance for Mac Ingles?

11 A. No, sir.

12 Q. In fact, you were terminated?

13 A. That's correct.

14 Q. So once you lost the injunction after  
15 that you were out of the picture; you filed the  
16 pleadings but you are out of the picture after that,  
17 right?

18 A. The last entry that I had on our  
19 records for any billable time was August the 3rd,  
20 1990.

21 Q. And you never made another court  
22 appearance?

23 A. That is correct.

24 Q. And the Rumsey, Breeden firm took over  
25 after you, right?

A. Anderson - Cross

1 Q. Turn if you would to Exhibit 32. It's  
2 the order in the civil case?

3 MR. BUGG: Your Honor, may we approach  
4 the bench? I'm sorry to hold things up.

5 (A conference was held at the bench.)

6 BY MR. BAYLISS:

7 Q. Now, Mr. Anderson, look at -- the two  
8 cases were consolidated, remember? Dively's case --  
9 you were out of it before they were consolidated?

10 A. Yes.

11 Q. The first part of the order deals with  
12 Dively's case against Ingles where it declared  
13 Dively was a 50 percent stockholder. The second  
14 case on Page 2, it says number two in the case of  
15 McClanahan Ingles versus Robert C. Dively. Read if  
16 you would at the bottom --

17 THE COURT: Get him a chance to get to  
18 whatever you want.

19 BY MR. BAYLISS:

20 Q. Read the bottom beginning Paragraph 3.

21 A. "Upon hearing the remainder of the  
22 evidence, the Court finding for the defendants in  
23 this case, it is adjudged, ordered and decreed that  
24 the judgment be entered in favor of all defendants  
25 to which plaintiffs note their exception."

A. Anderson - Cross

1 examination and it makes him his witness.

2 THE COURT: Make him his witness.

3 BY MR. BAYLISS:

4 Q. Exhibit 21 shows a check payable to  
5 McClanahan Ingles for \$17,136.82?

6 THE WITNESS: I thought you said  
7 defendants.

8 MR. BAYLISS: I did. It's my fault.

9 BY MR. BAYLISS:

10 Q. It's a check payable to Mac Ingles for  
11 \$17,136.82, reimbursement for travel expenses for  
12 Australia and other trips. Did Mr. Ingles ever tell  
13 you he paid \$17,000 to pay he and his wife -- take  
14 himself to Australia and take his wife at company  
15 expense to Hawaii and to San Francisco?

16 MR. BUGG: I object. He's leading the  
17 witness, and besides that that wasn't the  
18 testimony.

19 THE COURT: Rephrase the question.

20 MR. BAYLISS: I thought I could lead.  
21 In cross-examination my understanding --

22 THE COURT: We've been through this.

23 MR. BUGG: Sauce for the goose.

24 THE COURT: Rephrase the question.

25 BY MR. BAYLISS:

A. Anderson - Cross

1 Q. Was there ever a time that Mr. Ingles  
2 advised you about any of the perks he had been  
3 taking out of Sea Tech?

4 A. I've never seen this check before  
5 today.

6 Q. Was there ever a time that he advised  
7 you of any of the perks that were taken out of Sea  
8 Tech?

9 A. I don't recall if he did.

10 Q. Did he ever advise you of any  
11 agreements regarding set-offs?

12 A. I don't recall that.

13 Q. Did he ever advise you of Willoughby  
14 Harbor and money owed to Willoughby Harbor?

15 A. I believe Mr. Davis in our office was  
16 involved with some mechanic's liens suit with  
17 Willoughby Harbor.

18 Q. No. I'm talking about money Mac Ingles  
19 owed Sea Technology at Willoughby Harbor?

20 A. I don't recall that.

21 Q. Did he ever advise you that he was a  
22 50/50 stockholder?

23 A. My understanding when I filed the suit  
24 was that he was a hundred percent stockholder and I  
25 was very surprised to see the Gloucester suit in

A. Anderson - Cross

1 which Mr. Dively alleged that he was a 50 percent  
2 stockholder.

3 Q. Where did you get that understanding  
4 from that he was a 50 percent stockholder?

5 A. Mr. Dively's --

6 Q. No. I'm sorry. Where did you get the  
7 understanding that Mr. Ingles was a hundred percent  
8 stockholder?

9 A. From Mr. Ingles, and also based on my  
10 prior representation of Curtis Processing Company  
11 against Mr. Dively.

12 Q. That was several years earlier?

13 A. It would have been 1986 I think.

14 Q. Would you turn to Exhibit 18?

15 THE COURT: Plaintiff or defendant?

16 BY MR. BAYLISS:

17 Q. Plaintiff. This is -- did he ever show  
18 you his K-1 that showed he was a 50 percent  
19 stockholder?

20 A. Mr. Ingles provided a lot of tax  
21 information to us, but I don't recall exactly when  
22 that was provided to us or what it said.

23 Q. But did he ever show you a K-1 that  
24 showed he was a 50 percent stockholder?

25 A. I don't recall a specific time whether



A. Anderson - Cross

1 he did or didn't.

2 Q. Have you ever seen this document  
3 before?

4 A. I have seen documents similar to this  
5 in my file but whether or not it was the  
6 shareholders K-1 for the year 1987 for this  
7 particular corporation I just don't recall.

8 Q. Is that consistent with what Mr. Ingles  
9 was telling you, that K-1?

10 A. No.

11 Q. It's inconsistent, is it not?

12 A. That's correct.

13 Q. Did he ever share with you Exhibit 6?

14 A. Plaintiff?

15 Q. Yes.

16 A. I don't believe I've ever seen that.

17 Q. That's a letter from Jim Eaton which  
18 says that the tax return should be amended and it  
19 should be no longer 50/50 but a hundred percent and  
20 zero?

21 MR. BUGG: That letter was after he was  
22 out of the case.

23 MR. BAYLISS: That's exactly the point  
24 I want to make.

25 BY MR. BAYLISS:

A. Anderson - Cross

1 Q. During the period of time that you were  
2 involved in the case did he ever advise you anything  
3 other than he was other than he was a hundred  
4 percent stockholder during the time you were  
5 involved in the case?

6 A. While I was involved in the case that  
7 was my understanding, that he was a hundred percent  
8 stockholder.

9 Q. Did he ever share with you Exhibit 7,  
10 his financial statement? Turn to Page 2. Do you  
11 see the top of Page 2, it says 15 shares Sea  
12 Technology, Limited?

13 A. Right.

14 Q. You knew there were 30 shares  
15 outstanding?

16 A. I've never seen this.

17 Q. Answer my question first. You knew  
18 there were 30 shares outstanding, didn't you?

19 A. Yes, sir.

20 Q. And Mr. Ingles never shared a financial  
21 statement he gave to Federally insured financial  
22 institutions showing he only owned 15 shares?

23 A. I've never seen this financial  
24 statement.

25 Q. Keep flipping to the first pink thing

A. Anderson - Cross

1 there, and did he ever share that financial  
2 statement with you the next year that showed that he  
3 only owned 15 shares of Sea Tech stock?

4 A. No, sir.

5 Q. Never told you that at all, did he?

6 A. I've never seen this financial  
7 statement.

8 Q. When you prepare a lawsuit you rely on  
9 the integrity and honesty of your client?

10 A. Most certainly.

11 Q. And you are only as good as your  
12 client, you can only do as well as your client?

13 A. That's certainly a big part.

14 Q. And if the client doesn't tell you the  
15 truth it kind of affects your representation?

16 A. Yes, sir.

17 Q. And this is the first time you have  
18 seen the documents saying he was a 50 percent  
19 stockholder and not a hundred percent stockholder?

20 A. Yes, sir.

21 Q. There are more but I don't need to show  
22 you. You talked about fiduciary duties,  
23 Mr. Anderson. You are aware of the conflict of  
24 interest that lawyers have when they get involved in  
25 business transactions with their clients, aren't

W. Shaw - Direct

1 questions I have.

2 MR. BAYLISS: I don't have any  
3 questions, Judge.

4 THE COURT: All right. You may go.  
5 Next witness.

6 MR. BUGG: Next witness is Mr. Shaw.  
7 He could take a while. Do you want to give the jury  
8 a break?

9 THE COURT: Call Mr. Shaw.

10  
11 WILLIAM SHAW, III, called as a witness  
12 by and on behalf of the Defendant, having been first  
13 duly sworn, was examined and testified as follows:

14  
15 DIRECT EXAMINATION

16 BY MR. BUGG:

17 Q. Would you tell the ladies and gentlemen  
18 of the jury who you are, please.

19 A. William H. Shaw, III, Commonwealth's  
20 Attorney of Gloucester County.

21 Q. Mr. Shaw, how old are you?

22 A. 46.

23 Q. How long have you been practicing law?

24 A. Since 1972.

25 Q. Where did you go to college?



W. Shaw - Direct

1           A.       University of Virginia.

2           Q.       Where did you go to law school?

3           A.       University of Virginia.

4           Q.       When you got out of law school, could  
5 you start there and tell the ladies and gentlemen of  
6 the jury what you had done in practice of law since  
7 then?

8           A.       I clerked for Judge Ted Dalton of the  
9 U.S. District Court for the Western District of  
10 Virginia for a year. Then I went to Gloucester  
11 County, started with a firm called Porner & Field,  
12 was with them as an associate for two years until  
13 1974, started a firm with another lawyer named Cyrus  
14 Dolph. We were in practice for three years. Then  
15 he was interested in accounting and went to an  
16 accounting firm and worked as a tax lawyer. I've  
17 been a sole practitioner since that time, 1977, and  
18 the Commonwealth's Attorney -- and assistant  
19 Commonwealth's Attorney for about 18 months between  
20 1977 and '79. I was first elected as Commonwealth's  
21 Attorney in November of '79, took office January 1st  
22 of '80, and have been Commonwealth's Attorney since  
23 then.

24           Q.       You've been Gloucester County's  
25 Commonwealth's Attorney since January 1 of 1980?



W. Shaw - Direct

1 A. Yes, sir.

2 Q. Nonstop?

3 A. Nonstop.

4 Q. Is that a hundred percent of the time  
5 legal time for you?

6 A. It's just about. It's not made that  
7 way but that's the way it's working out.

8 Q. How long have you known Mac Ingles?

9 A. Since 1973. He came to work for a firm  
10 in Gloucester Courthouse which was near the firm  
11 where I was working.

12 Q. Give the ladies and gentlemen of the  
13 jury some idea of Mr. Ingles' criminal practice  
14 background as you experienced it in Gloucester  
15 County.

16 A. When we were both starting out the  
17 first few years we were on court appointed lists in  
18 Juvenile Court and the General District Court. I  
19 got off the list at some point and he got off the  
20 list at some point. Most of the cases you do were  
21 cases that were handled in the lower courts and  
22 didn't go to Circuit Court.

23 Q. How about once you became the  
24 Commonwealth's Attorney, starting there generally  
25 what criminal practice experience have you had with

W. Shaw - Direct

1 Mr. Ingles, what kinds of cases has he handled in  
2 Gloucester County?

3 A. I have an assistant and for years my  
4 assistant has handled Traffic Court and Juvenile  
5 Court, and I think that she probably sees him more  
6 than I do. I haven't had a whole lot of contact  
7 with him.

8 Q. Primarily you handle which cases?

9 A. I handle criminal cases in the General  
10 District Court and almost all Circuit Court cases  
11 except those that are appealed from preliminary  
12 hearings in Juvenile Court.

13 Q. Circuit Court cases are usually what  
14 type of crime, felony or misdemeanor?

15 A. It's both. The majority of them are  
16 felonies.

17 Q. Do you have to run for political  
18 office?

19 A. Yes.

20 Q. Is Mr. Ingles a political supporter of  
21 yours?

22 A. We're not of the same political party.

23 MR. BAYLISS: He didn't answer the  
24 question.

25 THE COURT: That's not in answer of the

W. Shaw - Direct

1 question.

2 BY MR. BUGG:

3 Q. Is Mr. Ingles a political supporter of  
4 yours?

5 A. I don't know.

6 THE COURT: I'm a Democrat and I vote  
7 for George Bush.

8 BY MR. BUGG:

9 Q. I would hope Mr. Ingles would support  
10 me in an election, yes.

11 Q. Is Mr. Ingles a close friend of yours?

12 A. Not a close friend, friend, colleague  
13 as I am with most of the other lawyers.

14 Q. Do you feel Mr. Ingles controls you?

15 MR. BAYLISS: His feelings are  
16 absolutely irrelevant.

17 THE COURT: Yes, they are. Yes, sir.

18 BY MR. BUGG:

19 Q. Has Mr. Ingles ever tried to exert  
20 influence over you?

21 MR. BAYLISS: That's certainly  
22 leading.

23 THE COURT: That's certainly leading.  
24 Sauce for the goose.

25 BY MR. BUGG:

W. Shaw - Direct

1           Q.       Now, you are obviously familiar with  
2       the Commonwealth versus Dively cases that started in  
3       1990 and ended in 1991?

4           A.       Yes, sir.

5           Q.       Were you the prosecuting attorney in  
6       Gloucester County?

7           A.       Yes, sir.

8           Q.       When did you first have any contact and  
9       with whom regarding those cases?

10          A.       Sometime in April of 1990. The first  
11       contact I believe was with Deputy Adams of the  
12       Gloucester County Sheriff's Department. He told me  
13       the report had been made, Mr. Ingles had been to see  
14       him, a report had been made. He told me briefly  
15       what it was about. He had some items in writing  
16       which I looked at. Then I talked to Mr. Ingles at  
17       least three times before the indictments were  
18       brought.

19          Q.       The indictments were when?

20          A.       May 7th, I think of '90.

21          Q.       When you talked to Mr. Ingles those  
22       roughly three times who was present?

23          A.       The first time I believe Deputy Adams  
24       was present. The second time there was -- one of  
25       the other two times -- Mr. Ingles was present both

W. Shaw - Direct

1 times. On one of those occasions Mr. Anderson was  
2 present, Mr. Ingles' brother who is also a lawyer  
3 was present, Mr. Adams was present.

4 Q. Did you tape a couple of those  
5 conversations?

6 A. Yes, and I think I put in there who was  
7 there.

8 Q. April 26 was one of them?

9 A. Whatever the date is, yes.

10 Q. May 1st was the other one?

11 A. Yes.

12 Q. And now when Mr. Ingles came to you  
13 what did he generally relate to you had happened?

14 A. Well, he told me the background of the  
15 company called Sea Technology which he had started  
16 with Mr. Dively and what the company did, what they  
17 made. He then told me that Mr. Dively had left and  
18 sent a letter of resignation and Mr. Ingles had been  
19 away from the business for a while. He told me he  
20 was more active earlier in the course of the  
21 business which had started sometime in the middle  
22 80's and that he had gone and discovered trying to  
23 pick up where things were because it seemed to be  
24 that the business wasn't -- nothing was happening,  
25 and he told me about some contacts he had made with



W. Shaw - Direct

1 various marinas. He had been to see a couple of  
2 marinas and they didn't have files.

3 Q. Who didn't have the files?

4 A. At Sea Tech there were no files and  
5 then he told me -- he mentioned Poole's Grant Marina  
6 in Hampton, Shark Island which is in New Jersey,  
7 Dock of the Bay which is in Ohio. The first  
8 instance dealt with some tools and that's what Adams  
9 was working on primarily and he had been removed.

10 Q. What did he tell you about the tools?

11 A. That tools belonging to Sea Tech as  
12 well as one or two or three that belonged to a  
13 business called Lower Chesapeake, it was Willoughby  
14 Harbor which Mr. Ingles was involved in, had been  
15 removed by Mr. Dively. Somewhere during the course  
16 of the time we talked, between the first time and  
17 the last time, some of those items were brought  
18 back, but not all of them were brought back.

19 Q. Did you talk to or did Mr. Adams relate  
20 to you that he talked to an employee named Donald  
21 Garland?

22 A. Donald Garland, Sharon Garland, Bill  
23 Robinson.

24 Q. What did those people say about the  
25 equipment brought back?

W. Shaw - Direct

1 MR. BAYLISS: That's double hearsay.

2 BY MR. BUGG:

3 Q. Did you talk to Mr. Garland?

4 A. Not then, later.

5 Q. What did he say about it?

6 MR. BAYLISS: That's hearsay.

7 MR. BUGG: All the police officers have  
8 been relating what they were told.

9 THE COURT: Nobody objected to it.

10 MR. BUGG: It's pertinent because you  
11 are talking about the Commonwealth's Attorney's  
12 state of mind.

13 THE COURT: Nobody objected.

14 MR. BUGG: It's not objectionable  
15 because you are dealing with the question of whether  
16 there is a state of facts which would lead a  
17 reasonable person to conclude there was criminal  
18 conduct.

19 THE COURT: You think that is an  
20 exception to the hearsay rule? Show me.

21 MR. BAYLISS: In addition Mr. Shaw is  
22 not on trial today. It's not whether Mr. Shaw did  
23 what or what. It's Mr. Ingles.

24 MR. BUGG: Your Honor, Friend, 225.

25 THE COURT: Show it to me. All right,

W. Shaw - Direct

1 not offered for the truth. Go ahead.

2 BY MR. BUGG:

3 Q. What were you told by these witnesses  
4 about whether all the tools --

5 THE COURT: Let me inform the jury  
6 about what I'm talking about. Ladies and gentlemen,  
7 these statements were made, but they are not made  
8 for the purpose of saying they are truthful. They  
9 are made for the purpose other than that.

10 BY MR. BUGG:

11 Q. Mr. Shaw, what did you learn from the  
12 witnesses about the tools?

13 A. After the indictment?

14 Q. Yes, sir.

15 A. The tools were removed in a truck or  
16 trucks by Al Brooks who was a former employee about  
17 that time. Mr. Dively was present. I don't know  
18 that he actually -- Mr. Garland didn't actually say  
19 move anything. He was present. The tools were  
20 taken over there. Of course, this is later on that  
21 the tools were brought back. Mr. Garland said the  
22 tools were brought back. I don't know if it was by  
23 Mr. Brooks, but Mr. Garland signed for the tools.  
24 This is not just tools, it's equipment that you  
25 would use.

W. Shaw - Direct

1 Q. Inventory?

2 A. Inventory, and he showed me a pile of  
3 inventory that they had stacked under --

4 Q. When you were down at Sea Tech they  
5 showed you the physical inventory that had been  
6 returned?

7 A. Yes.

8 Q. What did he tell you about it?

9 A. That some of what was returned couldn't  
10 be used in the manufacture of the product and it was  
11 either because it didn't meet --

12 THE COURT: That doesn't have a thing  
13 in the world to do with forming an opinion.

14 BY MR. BUGG:

15 Q. Did he tell you there was other  
16 inventory that hadn't been returned?

17 A. Yes.

18 Q. And was Mr. Garland the person that  
19 actually helped load it and drive it over there?

20 A. He may have helped. I think he  
21 received it. I can't remember.

22 Q. Now, you also were informed that some  
23 of the tools and inventory were brought back at one  
24 point?

25 A. Yes.

W. Shaw - Direct

1 Q. What was the importance of that to  
2 you?

3 MR. BAYLISS: Your Honor, the  
4 importance to him is not relevant.

5 MR. BUGG: Yes, it is.

6 THE COURT: Let him answer it. What  
7 was the importance of bringing the tools back,  
8 Mr. Shaw?

9 THE WITNESS: Your Honor, if there's an  
10 embezzlement it is my opinion that if you take the  
11 stuff and pay it back later that doesn't excuse what  
12 has happened if you had criminal intent when you  
13 took the tools.

14 *Bugg*  
14 ~~THE COURT~~: What did Mr. Ingles tell  
15 you about Poole's Grant?

16 THE WITNESS: Poole's Grant was a  
17 marina in Hampton. It was put on to it by getting a  
18 bill I believe from someone, a subcontractor on the  
19 job. Marina Tech which was owned -- which  
20 Mr. Ingles said was owned by Mr. Dively was a  
21 general contractor on the job over in Hampton,  
22 Poole's Grant. They had gotten a bill from one of  
23 the subcontractors. In checking that out he  
24 discovered an item, an \$18,000 line item about  
25 Marina Tech, it was an \$18,000 line item. He filed



W. Shaw - Direct

1 a mechanic's lien.

2 BY MR. BUGG:

3 Q. When you talk about an \$18,000 line  
4 item what are you talking about?

5 A. As an account receivable.

6 Q. And what did he do?

7 A. He filed a mechanic's lien on Poole's  
8 Grant at that point. This is all before the  
9 indictment, filed the mechanic's lien.

10 Q. As a result of filing that mechanic's  
11 lien what did he tell you he discovered?

12 A. The lawyer for the Poole's Grant  
13 development in Newport News called him and said,  
14 look, we've paid, gave him copies of the letter --  
15 copies of the letters saying he paid \$39,000 and  
16 some for these items and eventually I think the lien  
17 was dismissed or something like that because he had  
18 been paid.

19 Q. What did Mr. Ingles tell you this line  
20 item in Poole's Grant was for Marina Tech?

21 A. It was \$18,000.

22 Q. What did he tell you that the records  
23 show that Marina Tech had been paid for the  
24 pedestals?

25 A. Between \$39,000 and \$40,000.

W. Shaw - Direct

1 Q. What did Mr. Ingles tell you about the  
2 price of \$39,000 for 40 pedestals?

3 A. He said that was high.

4 Q. What did he tell you about the same  
5 thing for \$18,000 for the pedestals?

6 A. That was low.

7 Q. Did he tell you anything about the  
8 meters?

9 A. The meters add to the price of whatever  
10 these items cost and the configuration is  
11 different. The price will -- the pedestals  
12 apparently could have different features to it and  
13 it varies according to the features. If there's no  
14 meter on them then it's less than what it is if  
15 there is a meter so it's a separate price.

16 Q. Now, you mentioned Shark Island. What  
17 did Mr. Ingles tell you about Shark Island?

18 A. He had gone to Shark Island by the time  
19 of the second meeting and possibly by the first, on  
20 the 26th. He had gone to Shark Island. Shark  
21 Island had some pedestals -- excuse me, dock boxes  
22 that were built at Sea Tech and carried Sea Tech  
23 labels and he had seen the labels. He had gone up  
24 and talked to the developer.

25 Shark Island was a yacht club, a

W. Shaw - Direct

1 marina, a yacht club. I found later it was in  
2 development. They were increasing it. It was a  
3 small former marina and they were increasing the  
4 dock space so they got these dock spaces. He had  
5 obtained from the principals of the Shark Island  
6 development a copy of the check, front and back, for  
7 sixty-eight hundred and some dollars.

8 Q. Did he show it to you?

9 A. Yes.

10 Q. Who was it payable to?

11 A. It was payable to Sea Technology.

12 Q. How was it endorsed?

13 A. Sea Tech. Then Mr. Dively endorsed it  
14 as president and pay to the order of and deposited  
15 to Marina Technology.

16 Q. Did he tell you whether Sea Tech had  
17 gotten any of that money?

18 A. He said that he hadn't gotten any of  
19 the Poole's Grant money, hadn't gotten Shark Island  
20 money.

21 Q. What did he tell you about where the  
22 dock boxes were built?

23 A. He said they were built at Sea  
24 Technology.

25 Q. What did he tell you about who paid

W. Shaw - Direct

1 for the advertising?

2 A. He said he did.

3 Q. What did he tell you about who paid for  
4 the shows?

5 A. Sea Technology. That's where these  
6 things were seen, at the Sea Technology booths.

7 Q. What did he tell you about the labor  
8 and parts?

9 A. He said he did -- he said Sea Tech did.

10 Q. At some later time did you actually  
11 yourself after the indictments go to Shark Island?

12 A. Yes.

13 Q. Did you see the dock boxes at Shark  
14 Island?

15 A. Yes.

16 Q. Did Mr. Ingles show you photographs  
17 that he brought back from Shark Island when he went  
18 up in April?

19 A. Yes.

20 MR. BUGG: Let me ask you -- let me ask  
21 the deputy to show you these series of photographs.

22 MR. BAYLISS: Judge, these are pictures  
23 taken by somebody other than Bill Shaw. They aren't  
24 the proper person to get in.

25 THE COURT: That's not the test.

W. Shaw - Direct

1 Pictures are shown to the witness. If he can say  
2 that represents what he saw at the time they can be  
3 introduced.

4 THE WITNESS: These pictures were shown  
5 to me in April of '90 and I didn't see the actual  
6 item until June.

7 BY MR. BUGG:

8 Q. Are they some of the pictures  
9 Mr. Ingles showed you?

10 MR. BAYLISS: That's my objection. He  
11 can testify what he saw in June. Mr. Ingles can  
12 testify what he saw in April.

13 MR. BUGG: He can testify Mr. Ingles  
14 gave him these pictures.

15 THE COURT: Yes, he can, if that's  
16 where he got them.

17 THE WITNESS: Yes, sir, these are the  
18 pictures.

19 THE COURT: You can ask him if Ingles  
20 gave him the pictures, but as far as introducing  
21 them is concerned he's going to have to do a little  
22 more than that.

23 THE WITNESS: These are the pictures.

24 BY MR. BUGG:

25 Q. You went to Shark Island?



W. Shaw - Direct

1           A.       I didn't have these pictures but I went  
2 to Shark Island.

3           Q.       Are those pictures a fair  
4 representation of Shark Island and the dock boxes?

5           A.       Yes, sir. There are more than those  
6 shown in these pictures.

7           Q.       Let me show you another sheet of  
8 pictures and these are marked Defendant's Exhibit  
9 71C and ask you if they are more of the pictures  
10 that Mr. Ingles showed you?

11          A.       Yes, sir. I remember the bottom two.  
12 I remember this pier.

13               MR. BUGG: Your Honor, I move the  
14 pictures in and I ask that the ones that haven't  
15 been marked be clipped together as Defendant's  
16 Exhibit 77.

17               THE COURT: Introduced and marked as 77  
18 and the others have been marked.

19               MR. BUGG: And I move their  
20 introduction as Exhibit 71C.

21               THE COURT: Introduced and marked as  
22 Defendant's Exhibit 71C.

23               (The photographs referred to were  
24 marked by the Court as Defendant's Exhibits 77 and  
25 71C, and received into evidence.)

W. Shaw - Direct

1 MR. BUGG: With the Court's permission,  
2 I would like to circulate to the jury a copy of the  
3 check and a copy of the photographs.

4 THE COURT: You may certainly do so.

5 BY MR. BUGG:

6 Q. When you were at Shark Island,  
7 Mr. Shaw, did you talk to the management people  
8 there?

9 A. Yes, sir. I talked to a Howard Hoffman  
10 who is the manager and William Gerwick who is the  
11 developer. He was a minority owner but the  
12 developer.

13 Q. Did they relate to you the  
14 circumstances under which that check was issued?

15 A. Yes.

16 Q. What did they tell you?

17 MR. BAYLISS: Judge, Allison King has  
18 been here and testified about the check. If this  
19 isn't offered for the truth of it I don't know what  
20 it's offered for.

21 THE COURT: I don't know either because  
22 Ms. King testified as to how the check was given and  
23 then called and so on and so forth, Mr. Bugg. I  
24 don't know what this is --

25 MR. BAYLISS: The check is not in

1 dispute.

2 MR. BUGG: Your Honor, these people had  
3 some first-hand involvement. That's all I want to  
4 ask him about. Again, it's not offered for the  
5 truth. It's offered for the reasonable belief when  
6 an indictment is sought.

7 THE COURT: I don't know how you offer  
8 something that's already been testified to if it's  
9 not for the truth.

10 BY MR. BUGG:

11 Q. What did Messieurs Gerwick and Hoffman  
12 tell you about that check?

13 A. It was the first check, a deposit  
14 check, when the first load came up and it was issued  
15 as the deposit which went back with it. I don't  
16 know whether it was -- I think it was hand delivered  
17 to Al Brooks who brought the items up in the truck  
18 in the first -- I want to say 14. I'm not sure.  
19 Someone had called. Whether it was Mr. Brooks  
20 or Mr. Dively, I forgot now. They told me. I  
21 forgot.

22 MR. BAYLISS: Now, someone --

23 MR. BUGG: He said it was one or the  
24 other.

25 MR. BAYLISS: We are getting into both

W. Shaw - Direct

1 speculation.

2 MR. BUGG: They both said they called.

3 THE COURT: Let's get on with this  
4 case.

5 BY MR. BUGG:

6 Q. What did they tell you?

7 A. They called up because the check was  
8 payable to Sea Tech and they wanted it payable to  
9 Marina Tech, and they said that they told them then  
10 that no, they thought they were dealing with Sea  
11 Tech and that's why they had it issued. Gerwick is  
12 the one that actually signed the check. Hoffman may  
13 have been the one that actually delivered the check  
14 to Brooks.

15 Q. What did Mr. Ingles tell you about what  
16 Mr. Dively's position was with Sea Tech while all  
17 this was going on?

18 A. He was president and director of Sea  
19 Tech from -- I don't know what the timing was. I  
20 don't know what offices they shared but up until the  
21 resignation which was sometime in March, I think, of  
22 '90. He served as officer and director.

23 Q. And as the Commonwealth's Attorney of  
24 what importance was that to you?

25 A. An embezzlement is built on the

W. Shaw - Direct

1 relationship of trust that is set up between an  
2 individual and another individual, the individual in  
3 an entity he works for.

4 Q. What did he tell you about Dock of the  
5 Bay?

6 A. Dock of the Bay was a marina in the --  
7 Mr. Ingles?

8 Q. Yes.

9 A. Was a marina in Ohio and they had  
10 ordered 20 some pedestals and a considerable greater  
11 number, 140 or 150, dock boxes, that the first group  
12 of -- the pedestals -- the first load involved a  
13 combination, all of the pedestals and some of the  
14 dock boxes all of which were constructed at Sea  
15 Technology.

16 Q. Do you remember how many pedestals  
17 there were?

18 A. There was 29 of one and 25 of the  
19 other. I think it was 29 pedestals but I'm not  
20 sure.

21 Q. And what did Mr. Ingles tell you about  
22 payments on Dock of the Bay?

23 A. They hadn't gotten it. He had learned  
24 by the time he got up there that there was more than  
25 the one shipment, that there were subsequent



W. Shaw - Direct

1 shipments. In fact, he was there while a shipment  
2 actually came in.

3 Q. Delivered by whom?

4 A. Adam Whiting, and that Mr. Whiting who  
5 apparently knew Mr. Ingles thought Mr. Ingles was  
6 affiliated with the marina and asked him for the  
7 check. Mr. Ingles looked and verified that the  
8 pedestals were there and that there were some dock  
9 boxes.

10 Q. Did you eventually see the check for  
11 payment of deposit for Dock of the Bay and payment  
12 for the first shipment?

13 A. I subpoenaed all of the bank records  
14 and the copy came.

15 Q. Based on your information did Sea  
16 Technology get any of that money?

17 A. No. It all went to Marina Tech.

18 Q. The dock boxes it's your understanding  
19 they were made at the back of Sea Technology with  
20 Sea Technology labor and materials?

21 A. Yes, the first group, not -- again,  
22 there were three or four shipments of dock boxes.  
23 The first group was made at Sea Technology.

24 Q. The shipments before Mr. Dively left?

25 A. Right.

W. Shaw - Direct

1           Q.       Now, on May 7th, 1990 what did you do  
2 with this information?

3           A.       I had prepared the form of the  
4 indictment. The indictments -- when we prepare  
5 those forms we put at the foot of the indictments  
6 the witnesses who the Grand Jury should call about  
7 the cases, so I put Mr. Ingles' name at the foot of  
8 them and Deputy Adams' name at the foot of them.  
9 Mr. Ingles and Mr. Adams both appeared at the Grand  
10 Jury, testified and I'm not present during that  
11 proceeding. In fact, I don't think I was in Circuit  
12 Court.

13          Q.       Who prepared the indictments?

14          A.       I did. I directed it be prepared by my  
15 secretary.

16          Q.       Is it unusual to call the victim of a  
17 crime to testify before the Grand Jury?

18          A.       It's done. The usual case is to have  
19 the officer testify.

20          Q.       Is it unusual to have the victim  
21 testify?

22                   MR. BAYLISS: First let me object.  
23 It's already been determined and I ask that he not  
24 refer to him as a victim. It's been determined by a  
25 court of record there is no victim of a crime.

W. Shaw - Direct

1 Mr. Ingles --

2 THE COURT: Let me ask a question.

3 Mr. Shaw, is it usual in an embezzlement case to  
4 have the person who is reputed to have lost the  
5 property to appear before the Grand Jury and  
6 testify?

7 THE WITNESS: Judge, I'm trying to  
8 think of cases that we had.

9 THE COURT: I want you to do that.

10 THE WITNESS: More often than not the  
11 officer testifies.

12 BY MR. BUGG:

13 Q. Let me show you Plaintiff's Exhibit  
14 Number 28 which I flipped back to, some indictments  
15 that are already in evidence, and ask you if those  
16 are the indictments that you prepared?

17 A. Yes, sir.

18 Q. I just wanted him to identify them.  
19 Mr. Shaw, what is probable cause for the jury?

20 MR. BAYLISS: Your Honor, the Court  
21 will instruct the jury on probable cause. We don't  
22 need Mr. Shaw to do it.

23 MR. BUGG: It's the Commonwealth's  
24 Attorney. He's the guy on the spot that has to make  
25 a decision.

W. Shaw - Direct

1 MR. BAYLISS: Mr. Shaw is not on  
2 trial. Mr. Shaw didn't go to the Grand Jury, only  
3 Mr. Ingles went to the Grand Jury.

4 MR. BUGG: This is the man that has to  
5 make the determination.

6 THE COURT: I ain't so sure about  
7 that.

8 BY MR. BUGG:

9 Q. Mr. Shaw, did you make a determination  
10 about probable cause in connection with preparing  
11 and submitting these indictments to the Grand Jury  
12 in Gloucester County?

13 A. Yes, sir.

14 Q. What determination did you make?

15 A. That there was probable cause to bring  
16 the indictments.

17 Q. Do you seek indictments on the basis of  
18 probable cause or something else?

19 A. Not unless I think I'm looking at  
20 evidence that will carry -- go forth and sustain a  
21 conviction, of what I think will have a good chance  
22 of sustaining a conviction. If I see a case where  
23 there's probable cause only and I don't think I can  
24 get them on that I won't bring it.

25 Q. What determination did you make about



W. Shaw - Direct

1 the five indictments against Mr. Dively?

2 A. Based on the information I thought  
3 there was sufficient if proved to sustain  
4 convictions. Some cases are stronger than others,  
5 but yes.

6 Q. Before submitting the indictments did  
7 you discuss that matter with Mr. Ingles?

8 A. I'm sure I did.

9 Q. What did you tell him about what you  
10 just testified about?

11 A. What I just told you.

12 Q. Which was?

13 A. I thought there was sufficient evidence  
14 for probable cause and I thought there was  
15 sufficient evidence that could support a conviction.

16 Q. Did you tell him you were going to  
17 indict Mr. Dively?

18 A. I don't remember the words. I'm sure I  
19 did because I told him he would have to be there and  
20 I would have had to have him subpoenaed there to  
21 testify before the Grand Jury.

22 Q. Did he tell you to do it?

23 A. No.

24 Q. Did he pressure you to do it?

25 A. No.



W. Shaw - Direct

1 Q. Did he try to pressure you to do it?

2 A. No.

3 Q. If you had said, Mac Ingles, there  
4 isn't enough evidence here, I'm not going to do it  
5 and he said I want you to do it anyway, would you?

6 A. No.

7 Q. What would you have told him?

8 A. I'm simply not going to do it.

9 Q. Now, there's been a lot of talk in this  
10 case about an offset regarding Poole's Grant --

11 MR. BAYLISS: Your Honor, he's  
12 testifying. I've let him lead and I just have to  
13 say something.

14 THE COURT: Sauce for the goose,  
15 Mr. Bugg.

16 BY MR. BUGG:

17 Q. Are you familiar with the -- have you  
18 ever been given any information about an alleged  
19 offset between a Willoughby Harbor bill and a  
20 Poole's Grant bill?

21 A. Yes, sir. I don't know at what point,  
22 but yes, sir, I was.

23 Q. Approximately when do you think you  
24 first heard about that?

25 A. The indictments were in May. The

W. Shaw - Direct

1 receipts of the indictment was in July. The first  
2 real trial date that -- serious trial date was at  
3 the end of November. The best I can say I had known  
4 about it sometime before the first trial date of the  
5 claim.

6 Q. Do you remember looking at the line  
7 item which you referred to that you said Mr. Ingles  
8 told you about early on where he discovered this  
9 Marina Technology receivable?

10 A. Yes, sir.

11 Q. Let me hand you Defendant's Exhibit  
12 Number 25, and I flip to about the third page from  
13 the end and ask you -- first of all, look at the  
14 whole document.

15 A. Yes, sir. I reviewed it.

16 Q. Now, what was the importance to you of  
17 the information regarding this offset? First of  
18 all, what did Mr. Ingles tell you about this  
19 so-called offset?

20 A. It was apparently intended by  
21 Mr. Dively to be an offset.

22 THE COURT: He asked you the question  
23 when Mr. Ingles told you about it.

24 BY MR. BUGG:

25 Q. I asked him what he told him.

W. Shaw - Direct

1           A.       An offset to the Willoughby Harbor  
2       which I think is also on here. I saw these  
3       documents. I reviewed them. I don't know how I got  
4       them and there was a claim of an offset there and  
5       Mr. Ingles said that as -- the problem with the  
6       Willoughby Harbor was that there was some problems  
7       with apparently the boxes or components or whatever  
8       themselves and, therefore, some question about  
9       whether that bill should be paid. The defense was,  
10      and again, I might have gotten this from  
11      Mr. Bayliss --

12                   MR. BAYLISS: He asked you what Ingles  
13      told you.

14      BY MR. BUGG:

15           Q.       Did Mr. Ingles tell you if he had any  
16      agreement with Dively about the offset?

17           A.       One of those is a memo that apparently  
18      Dively wrote to two of the clients that we have an  
19      agreement. When I showed that to Ingles he said we  
20      never had an agreement.

21           Q.       Is there anything on that paper that  
22      you have in front of you that you attach any  
23      significance to in this litigation?

24           A.       It says long-term receivables, don't  
25      know when and if they will ever pay, and he listed

W. Shaw - Direct

1 Marina Tech. I just thought if he's Marina Tech who  
2 better to know when they would pay and that -- I  
3 just thought if it's an offset why don't you put it  
4 on here as an offset.

5 Q. What was the significance of this  
6 offset defense to you?

7 MR. BAYLISS: Judge, there's no  
8 testimony on the basis there's an offset defense.  
9 He asked him what Mr. Ingles told him.

10 MR. BUGG: This is a Commonwealth  
11 Attorney evaluating this information and making the  
12 decision about prosecuting this information. He's  
13 entitled --

14 THE COURT: I'm going to let him answer  
15 because I want to know.

16 THE WITNESS: I forgot the question.

17 THE COURT: The question is, what does  
18 an offset of that nature mean to you as  
19 Commonwealth's Attorney in conducting the  
20 prosecution of this case?

21 THE WITNESS: In this case because  
22 Mr. Ingles said there was no agreement --

23 THE COURT: That isn't the question.  
24 What does that mean to you as Commonwealth's  
25 Attorney in prosecuting this case when it's shown to

W. Shaw - Direct

1 you the alleged offset?

2 THE WITNESS: Mr. Ingles didn't show it  
3 as an offset. That's the claim I had gotten from  
4 the defense attorneys and I explored that with  
5 Mr. Ingles.

6 THE COURT: Regardless of where you got  
7 it from, the question Mr. Bugg put to you, as  
8 Commonwealth's Attorney you are faced with this type  
9 of situation and you are given papers that indicate  
10 there is an offset between the two parties who are  
11 arguing about the property. What does that mean to  
12 you?

13 BY MR. BUGG:

14 Q. Question, did you think you should  
15 dismiss that case?

16 A. If Mr. Ingles had acknowledged there  
17 was an offset, yes, it would have great  
18 significance. If he says no, there was no  
19 agreement, then it didn't have much significance.  
20 It just showed me a defense that was going to be  
21 used.

22 Q. Were you also given any information  
23 about the meters and the pricing of the pedestals  
24 that were mentioned before?

25 A. The Willoughby -- I don't know how many



W. Shaw - Direct

1 pedestals there were, but it worked out to \$275 a  
2 pedestal, but those pedestals according to  
3 Mr. Ingles had no meters and that has some  
4 significance because it adds, I don't know, \$100,  
5 \$150.

6 MR. BUGG: I move that exhibit in.

7 THE COURT: What's the number, 25,  
8 Defendant's Exhibit 25, introduced and marked as  
9 such.

10 (The document referred to was marked by  
11 the Court as Defendant's Exhibit 25, and received  
12 into evidence.)

13 BY MR. BUGG:

14 Q. In front of you get the defendant's  
15 exhibit book. Flip over to Exhibit Number 61. Get  
16 in front of you, first of all, Exhibit Number 61.  
17 What is the total shown on that document?

18 A. \$11,511.75.

19 Q. Let me hand you another exhibit marked  
20 Defendant's Exhibit 61D and ask you if you also saw  
21 that document?

22 A. Yes, sir. Eleven thousand four --  
23 \$11,400.95.

24 Q. Put those two back in front of you and  
25 let me ask you a couple of questions about those.

W. Shaw - Direct

1 When did you first know that Mr. Dively had left  
2 behind some notes telling Jane Hogge to bill Marina  
3 Tech for parts and labor used on Dock of the Bay and  
4 Shark Island?

5 A. In one of the -- or both of the  
6 conversations, one or both of the conversations we  
7 had that was taped.

8 Q. And they were April 26th, 1990 and May  
9 1st, 1990?

10 A. They're dated. I don't know the dates  
11 on them.

12 Q. You recorded those meetings?

13 A. Yes.

14 Q. Have you reviewed the transcript?

15 A. Yes.

16 Q. Is there reference in the transcripts  
17 of his telling you about that?

18 A. Yes, sir. There are two references.  
19 Whether they're both in one or one in each I don't  
20 know.

21 Q. Did Mr. Ingles bring you a typed  
22 statement of what he had learned about the case with  
23 his name typed at the top, McClanahan Ingles,  
24 Gloucester, Virginia in a package of witness  
25 statements?

W. Shaw - Direct

1           A.       Yes. There was background on a lot of  
2 the witnesses, people that he had dealt with. I  
3 remember Jane Hogge, Richard Boykin, Mr. Ingles,  
4 Risley I think.

5           Q.       Flip in your book over to Exhibit 60B.  
6 That should be a memo that has some information  
7 removed from it, but it leaves information about the  
8 memos that you have just been talking about. Do you  
9 recognize that as an edited version of what  
10 Mr. Ingles brought to you?

11          A.       Yes, sir.

12          Q.       When did he bring you that?

13          A.       I'm pretty sure he brought it before  
14 the indictment. I can't say. None of these -- none  
15 of the items that he brought me were dated.

16          Q.       But you are pretty sure it was before  
17 the indictment?

18          A.       I'm pretty sure.

19          Q.       Now, directing your attention back to  
20 those two memos that were in front of you and have  
21 different amounts did you examine those?

22          A.       I did, but now I've lost one of them.  
23 61 and 61D?

24          Q.       The one that has \$11,511 and the one  
25 that has \$11,400. Do you have both of those in

W. Shaw - Direct

1 front of you?

2 A. Yes.

3 Q. Were both of those supplied to you at  
4 some point?

5 A. At some point.

6 Q. What significance did you attach to  
7 those pieces of paper?

8 A. It appeared to be an attempt to account  
9 for some of these items.

10 Q. Were you concerned about the fact that  
11 there was more than one version?

12 A. I don't know that I got them at the  
13 same time. I don't know that it had great  
14 significance. I got some clarification when I  
15 talked to Jane Hogge.

16 Q. Did you think that those items were  
17 important?

18 A. These --

19 Q. Those lists.

20 A. They're important as possible defense.

21 Q. Did you view them as fatal?

22 A. No.

23 Q. Why not?

24 A. This because of the prices. The 29  
25 pedestals which I assumed for \$275 which I assumed

W. Shaw - Direct

1 was Dock of the Bay, there are some parts I'm not  
2 sure about whether those parts were confined to Dock  
3 of the Bay or Shark Island or what. The 29  
4 pedestals corresponded with Dock of the Bay. The  
5 Shark Island ended up there but they don't add up to  
6 the same amounts of money.

7 Q. How did you regard those documents as a  
8 defense?

9 A. Not as an absolute defense, but it was  
10 something that was going to be brought into evidence  
11 as a defense.

12 Q. What did you think they were?

13 A. Attempts by Mr. Dively to explain what  
14 he had done and they appeared to be done after the  
15 fact.

16 Q. Do you have an opinion with regard to  
17 an attempt to account after the money was taken  
18 whether that presents a defense?

19 A. My opinion if it's an accurate account  
20 of what has transpired by the officer or director of  
21 the company then it's a defense, but if it's not an  
22 accurate account, if it's not a full account of what  
23 happened, then no, I don't think that's an absolute  
24 defense.

25 Q. Look at Exhibit 61A. For the record,



W. Shaw - Direct

1 Your Honor, I'm not sure if it's in evidence under  
2 that number it's the exhibit number we are using but  
3 it's the Hogge memo.

4 A. I have it.

5 Q. Do you know when you first saw that?

6 A. It was after the indictment, sometime  
7 before the first trial date but not -- that's the  
8 best I can do.

9 Q. How did you view that piece of paper in  
10 terms of preparing the case for trial?

11 A. This was a list that Jane Hogge had  
12 prepared except for the reference to -- there's a  
13 reference somewhere to Marina Tech. I can't seem to  
14 find it at the moment, but the reference to Marina  
15 Tech was the only --

16 Q. Look on the fifth page?

17 A. I saw that reference and assumed that  
18 what that was -- what those references were to -- I  
19 actually saw two pages in Exhibit 61D. There were  
20 two handwritten sheets and they always came to me as  
21 handwritten sheets.

22 Q. Flip over to Defendant's Exhibit Number  
23 60. Did you also have that one?

24 A. Yes, sir. As they came to me that was  
25 attached to I think 61 if I'm not mistaken.

W. Shaw - Direct

1 Q. Now, did you think those pieces of  
2 paper and Ms. Hogge's memo were important?

3 A. The Hogge memo didn't talk -- except  
4 for what's shown on the other two pages doesn't talk  
5 about anything that these cases involve, so no, in  
6 and of itself no, I didn't think so. It was only  
7 important as to the reference to those.

8 Q. What did you know about Jane Hogge?

9 A. She was an employee who had left Sea  
10 Tech after Mr. Dively left. She had gone to work  
11 for Mr. Dively.

12 Q. Do you know anything about her criminal  
13 background?

14 MR. BAYLISS: Your Honor, that is not  
15 proper. First of all, would you know about him, and  
16 he didn't get the right answer. He's already asked  
17 him --

18 THE COURT: I sustain the objection.

19 BY MR. BUGG:

20 Q. Did you do any investigation on  
21 Ms. Hogge's background?

22 MR. BAYLISS: He's trying to get in --

23 THE COURT: I sustain the objection.

24 MR. BUGG: The objection is leading.

25 THE COURT: Let's get on something

W. Shaw - Direct

1 else. Ms. Hogge already said she was convicted of a  
2 felony and she paid her debt.

3 MR. BUGG: I want to establish he knew  
4 that --

5 THE COURT: What difference does it  
6 make?

7 MR. BUGG: He's evaluating the  
8 evidence.

9 MR. BAYLISS: I object. The judge  
10 evaluated it.

11 THE COURT: I sustained the objection.

12 BY MR. BUGG:

13 Q. Did you feel Ms. Hogge was a neutral  
14 witness?

15 A. No.

16 Q. Why not?

17 A. By the time I was in it she had a  
18 criminal background but mainly she was an employee  
19 of Mr. Dively and based upon the information  
20 Mr. Ingles gave me she might have been involved in  
21 some of this.

22 Q. Let's talk about the stock ownership.  
23 What did Mr. Ingles tell you about Mr. Dively's  
24 ownership interest in Sea Technology?

25 A. He said originally they had each been

W. Shaw - Direct

1 given 15 shares. Mr. Dively sometime before had  
2 turned his shares either back into the company or  
3 over to Mr. Ingles. At the time that Mr. Ingles  
4 came to see me Mr. Ingles owned -- all the stock was  
5 in his name. He had given an option to Mr. Dively  
6 to purchase -- a 30 year option to purchase the  
7 stock, half the stock back. He showed me the copies  
8 of the certificates. He showed me a copy of the  
9 ledger book. He showed me a copy of the ledger book  
10 and a copy of the option agreement before the  
11 indictment I remember because I read the option  
12 agreement.

13 He said that if Mr. -- if he was going  
14 to sell -- if they were going to sell -- there had  
15 been some overtures at some point about the sale of  
16 the business and he had said up to the point --  
17 until he had gone back and found what had happened  
18 at this period of time he was going to treat  
19 Mr. Dively as half owner as far as the distribution  
20 of the sale proceeds.

21 MR. BUGG: May I circulate some of the  
22 exhibits?

23 THE COURT: Certainly, any of the  
24 exhibits that have been introduced, Mr. Bugg.

25 MR. BAYLISS: Judge, if we're going to

W. Shaw - Direct

1 circulate them let's give them all. I object  
2 because they're not going to pay attention to this.  
3 It's not fair to give one selectively.

4 THE COURT: Give them all.

5 MR. BUGG: It's just that he's been  
6 referring to Mr. Dively's notes and that's all -- in  
7 fact, there were two versions of it and that's all I  
8 want to show the jury.

9 MR. BAYLISS: That's already been  
10 testified to. Jane Hogge made some corrections on  
11 it.

12 THE COURT: I understand that. I'm  
13 sure that other people in the courtroom understand  
14 that, too.

15 MR. BAYLISS: All right. This is out  
16 of your book.

17 MR. BUGG: I can't find it.

18 MR. BAYLISS: Find what you want  
19 to give him. The jury knows what's happening  
20 here.

21 MR. BUGG: They've been hearing about  
22 these things for three days and I want them to see  
23 it. Which plaintiff's exhibit is that document?

24 MR. BAYLISS: If it's the same as yours  
25 give them yours.



W. Shaw - Direct

1 MR. BUGG: It's different. I ask the  
2 jury to look at Defendant's Exhibit 60 which is the  
3 original of Mr. Dively's note of 2-23-90,  
4 Defendant's Exhibit 61 which is the original of the  
5 3-1-90 note, and Plaintiff's Exhibit 15 which is the  
6 same note but a copy that has additional changes on  
7 it.

8 THE COURT: Hand it to them.

9 BY MR. BUGG:

10 Q. Mr. Shaw, as prosecuting attorney did  
11 it make any difference to you whether Mr. Dively  
12 owned 50 percent of the shares or no percent of the  
13 shares?

14 A. No.

15 Q. Why not?

16 A. Because the ownership of 50 percent or  
17 25, one share, whatever, the business is -- the  
18 owner of the property is the corporation itself. If  
19 they were partners treating as a partnership, no, it  
20 wouldn't be embezzlement, but a corporation even  
21 though he owns 50 percent, and I assumed for my  
22 purposes that he did, I didn't want to get hung up  
23 with that, that doesn't give him the authority to  
24 embezzle the money.

25 Q. After the indictments you continued to

W. Shaw - Direct

1 investigate the matter?

2 A. Yes.

3 Q. Did you talk to witnesses?

4 A. Yes.

5 Q. Who did you talk to?

6 A. In addition to Hoffman and Gerwick I  
7 talked to Adam Whiting and Mr. and Mrs. Garland,  
8 Jane Hogge several times, Trudy Pells. These are  
9 per personal interviews and then I talked on the  
10 telephone several times to Mr. Levinsky, Mr. Wolff,  
11 Mr. Sietzman, McAllister, talked to anybody I was  
12 going to call as a witness. I talked to  
13 Mr. Boykin. I would have to see a witness list, but  
14 I talked to everybody either by phone or in person.

15 Q. Let me direct your attention to Pelican  
16 Harbor. Was an additional indictment returned on  
17 Pelican Harbor in January?

18 A. No, July.

19 Q. I'm sorry, July. What was the date?

20 A. I think it was sometime, the 26th or  
21 27th if I'm not mistaken.

22 Q. What information were you given about  
23 Pelican Harbor?

24 A. Mr. Ingles said he had been in contact  
25 with Mr. Sietzman I think because there was a

W. Shaw - Direct

1 problem. He learned about it because there was a  
2 problem with the product that had been provided and  
3 Mr. Sietzman called him and he learned that in the  
4 course of dealing with Mr. Sietzman had issued a  
5 check payable on deposit to Sea Technology before  
6 Mr. Dively left and that Sea Technology did not get  
7 that money either.

8 Q. Now, did you make a determination about  
9 probable cause in connection with that indictment?

10 A. I thought there was.

11 Q. Did you prepare the indictment?

12 A. Yes. I think I've already seen it.

13 Q. You looked at that one. Did you make a  
14 determination as to whether the evidence was  
15 sufficient to support a conviction as you testified  
16 about the others?

17 A. I thought it was.

18 Q. Did you tell Ingles that?

19 A. I'm sure I did.

20 Q. Who indicted Mr. Dively for Pelican  
21 Harbor?

22 A. I prepared the indictment same as  
23 before. I think Mr. Ingles -- I don't think  
24 Mr. Adams was there. Mr. Ingles went before that  
25 Grand Jury.

W. Shaw - Direct

1 Q. Did Ingles pressure you to indict  
2 Mr. Dively at Pelican Harbor?

3 A. No.

4 Q. If he told you he wanted to and you  
5 didn't, would you have done it anyway?

6 A. No.

7 Q. Did Mr. Ingles share some information  
8 with you about jobs that you didn't indict him on?

9 A. Yes.

10 Q. Do you remember the names on them?

11 A. DLST, Catskill, they both involved  
12 product that they were out of state, Mobjack Bay  
13 which is in Mathews County. There may have been  
14 others. I'm not sure.

15 Q. Do you remember Mike Harmon?

16 A. Yes.

17 Q. Did you see him here in the courthouse  
18 today?

19 A. Yes.

20 Q. Do you remember having conversations  
21 with Mike Harmon about this case?

22 A. Yes.

23 Q. Did you ever tell Mr. Harmon --

24 MR. BAYLISS: Let him ask you what did  
25 you and Mr. Harmon discuss.

W. Shaw - Direct

1 THE COURT: You are leading him. Ask  
2 him what he and Harmon said.

3 MR. BUGG: I'm entitled to tell him  
4 what Mr. Harmon said.

5 THE COURT: No, sir. That's leading.  
6 Let him tell you what they said.

7 BY MR. BUGG:

8 Q. Mr. Shaw, what conversations did you  
9 have with Mr. Harmon about whether if --

10 MR. BAYLISS: I object about whether  
11 if.

12 THE COURT: I sustain the objection.  
13 Ask him if they had any relative to this case and  
14 let him decide what he wants to tell you.

15 BY MR. BUGG:

16 Q. Did you have conversations with  
17 Mr. Harmon relative to this case?

18 A. Yes.

19 Q. Would you tell the ladies and gentlemen  
20 of the jury what those conversations were?

21 A. I probably had more than one, maybe it  
22 was a couple in the same day. I may have talked to  
23 him on the phone, but the first real conversation we  
24 had was in August, late July, early August of '90.  
25 He had come down I believe with Mr. Bayliss to look



W. Shaw - Direct

1 at the -- we had discussed that I would let them  
2 look at the information in my files and they were  
3 going to come down and look at it.

4 The best I can remember Mr. Bayliss was  
5 there earlier and he left to do something else.  
6 Mr. Harmon stayed. Mr. Harmon said that he was in  
7 the case because he had more criminal experience  
8 than the other lawyers that were in the case is what  
9 he portrayed to me, and so we were talking about  
10 this case or cases generally.

11 We were talking about a case that I had  
12 just in March where we filed an indictment in a  
13 homicide case that was actually occurring at the  
14 trial and prosecution -- the trial and prosecution  
15 was occurring at the same time as this one. We  
16 talked about this case.

17 I told him that in cases of this nature  
18 I was observing that if the civil case is resolved ✓  
19 then quite often -- although it's not my policy  
20 quite often the criminal case goes, and the reason  
21 is if the civil case is resolved, and this is what I  
22 told him, the -- if there's a civil case and  
23 criminal case and the civil case is resolved then  
24 usually part and parcel of the civil case is a  
25 resolution, nol-pros, dismissed or whatever of the

W. Shaw - Direct

1 criminal case. The problem is, and I told him that  
2 at that point, if that's done I've got nobody who  
3 cares about the case anymore.

4 The plaintiff doesn't care because they  
5 want a civil settlement. The defendant certainly  
6 doesn't care because he wants a civil settlement,  
7 and there's nobody interested in the case anymore.  
8 If there's an impending settlement then the parties  
9 including the plaintiff and the witnesses lose their  
10 ardor. I think I used that word. I told him that  
11 in this case based on my experience of Mr. Dively if  
12 he was convicted he would get a suspended sentence.

13 Q. Why did you tell him that?

14 A. Because that's what usually happened in  
15 the cases I had prosecuted. There was also some  
16 guidelines, sentencing guidelines, that were coming  
17 into effect in January of '91 and while they were  
18 voluntary we had learned about them earlier. It was  
19 a pilot program and adopted as voluntary guidelines,  
20 and under what I had done to run the guidelines he  
21 would get a suspended sentence, but primarily that's  
22 what would normally happen in this case. He had no  
23 prior record.

24 Q. Did you ever tell Mr. Harmon --

25 MR. BAYLISS: Your Honor.

W. Shaw - Direct

1 MR. BUGG: He said they talked in  
2 generality about cases in general.

3 THE COURT: Let him ask the question  
4 because you are going to ask it if he doesn't.

5 MR. BAYLISS: I'm not going to ask  
6 him.

7 BY MR. BUGG:

8 Q. Did you ever tell Mr. Harmon that the  
9 Dively cases were going to go away if the civil case  
10 was settled?

11 A. Not as an offer. This was --

12 THE COURT: Did you make the statement,  
13 Mr. Shaw? ✓

14 THE WITNESS: No, sir. It was an  
15 observation of what happens generally in these type  
16 of cases.

17 THE COURT: But you did say something  
18 to him in the conversation if the civil matter is  
19 settled there is a possibility that the criminal  
20 cases --

21 THE WITNESS: Only in the general  
22 sense.

23 BY MR. BUGG:

24 Q. Did Mac Ingles or anybody for him tell  
25 you that's what he wanted to happen?

W. Shaw - Direct

1 A. No. ✓

2 Q. Any of his lawyers tell you that?

3 A. No. ✓

4 Q. What was going on with your work load  
5 then, Mr. Shaw?

6 A. That year was probably the heaviest  
7 case load we've had in Circuit Court. It was  
8 heavier that year than it is this year.

9 Q. After July 25th, 1990 did you continue  
10 to investigate the case?

11 A. Yes, sir, after July --

12 THE COURT: July, 1990 when you got the  
13 six indictments?

14 THE WITNESS: Yes.

15 BY MR. BUGG:

16 Q. The August trial date came up. Was it  
17 continued by agreement with Mr. Dively's lawyers?

18 A. Yes.

19 Q. The first trial date came up November  
20 19th, 1990?

21 A. Yes, sir.

22 Q. What happened?

23 A. At that time there were six charges. I  
24 moved to nol-pros or not prosecute two of them. I  
25 had a witness problem in two of them and couldn't go

W. Shaw - Direct

1 forward and I asked to go forward with the remaining  
2 four.

3 Q. Flip over to Exhibit 56 in the  
4 defendant's book. Is that the order that was  
5 entered that day? I'm sorry. I have the wrong  
6 number. Look at 55.

7 A. I'm looking at 55.

8 Q. Is that the order concerning the  
9 continuance from that day?

10 A. Yes, sir.

11 Q. Each time this case came up for trial  
12 did you interview the witnesses again?

13 A. Yes, sir. Well, just update, yeah.

14 Q. You mentioned that the cases involving  
15 the tools were nol-prossed. What does nol-pros  
16 mean?

17 A. They were not going to be prosecuted.

18 Q. Dismissed?

19 THE COURT: No.

20 MR. BUGG: I don't do much of this.

21 THE WITNESS: They could have been  
22 brought back.

23 THE COURT: Nol-pros means this case is  
24 not being prosecuted because they have insufficient  
25 evidence in my opinion to convict.



1 MR. BUGG: I don't think that's what  
2 the witness is going to say.

3 THE COURT: Maybe he has a different  
4 view. Tell me what you would say, Bill.

5 THE WITNESS: Your Honor, that's the  
6 reason but that's not the reason in this case.

7 THE COURT: I'm giving the definition  
8 of the usual nol-pros.

9 THE WITNESS: The usual nol-pros is  
10 insufficient evidence, yes.

11 THE COURT: Exactly what I said.

12 BY MR. BUGG:

13 Q. Why did you nol-pros the cases  
14 involving the tools?

15 A. One of them appeared to have involved  
16 two tools involving Willoughby Harbor Marina and I  
17 didn't know for one whether we would even get -- the  
18 cutoff between a felony which these were  
19 misdemeanors which are lesser crimes is \$200 in  
20 value and I wasn't sure that we could show they were  
21 more than \$200 in value as to the other tools  
22 because some of the tools went, some of them came  
23 back. Some of them couldn't be used.

24 I thought it was clouding up the  
25 issue. I wanted to keep this case as simple as

W. Shaw - Direct

1 possible. I thought the other cases were stronger,  
2 primarily the Shark Island, Poole's Grant, Dock of  
3 the Bay was stronger, so I wanted to keep it simple.

4 Q. In January when the cases came up for  
5 trial what happened then?

6 A. I had witness problems with two of the  
7 cases.

8 Q. Did you have to move for a continuance?

9 A. Yes.

10 Q. Flip over to 56, is that the order?

11 A. That appears to be the order, yes.

12 Q. Look at Number 57. Is that the  
13 nul-pros order in November for the two tool cases?

14 A. Yes.

15 MR. BUGG: I move the admission of all  
16 three of those.

17 THE COURT: Introduced and marked as  
18 55, 56 and 57.

19 (The documents referred to were marked  
20 by the Court as Defendant's Exhibits 55, 56 and 57,  
21 and received into evidence.)

22 BY MR. BUGG:

23 Q. Mr. Shaw, did members of my law firm  
24 assist you in some way in investigating this case,  
25 preparing it?

1           A.       Mr. Russell primarily. He sat in on  
2 some of the interviews with Mr. Ingles. I had  
3 discussed embezzlement law with him, and whether I  
4 asked or he offered he provided some photocopies of  
5 cases on Virginia cases on embezzlement.

6           Q.       Where did he get the names of cases?

7           A.       I think he got the first name from me.  
8 I don't know whether it was Boyd or Page or  
9 whatever. He got one from me and I think he took it  
10 from there.

11          Q.       Did Mr. Russell give you some  
12 information about the case?

13          A.       He gave me synopses that I presume he  
14 or somebody in your firm had made concerning  
15 depositions of Jane Hogge, Mr. Ingles, several  
16 others.

17          Q.       Synopses meaning written summaries?

18          A.       Written summaries.

19          Q.       Is it unusual, Mr. Shaw, in your  
20 practice to have a lawyer that represents a person  
21 involved in a criminal complaint assist you in some  
22 way?

23          A.       No. The role may be different, but no.

24          Q.       What was the Fisher case?

25          A.       It was a homicide case.

W. Shaw - Direct

1 Q. Were lawyers involved in that case?

2 A. Yes. There was a civil proceeding  
3 which had concluded prior to that case.

4 Q. Would you compare the involvement of  
5 those lawyers in the Fisher case with my law firm in  
6 this case?

7 A. Less in theory but a lot more on  
8 information. I, in fact, got all the depositions.  
9 I even got one of the lawyer's trial notebooks.

10 Q. In which case were you given a lot more  
11 information?

12 A. The Fisher case.

13 Q. Plaintiff's 27 and 28, if you could get  
14 to the other book, Mr. Shaw -- I believe it's 26 and  
15 27. They're already in evidence, Mr. Shaw. The  
16 first one I want to direct your attention to is a  
17 memo from W. W. Adams, Investigator, to you dated  
18 July 5, 1990. Did you get that?

19 A. Yes, sir.

20 Q. That is Number 27, your response?

21 A. Yes, sir.

22 Q. Why did you respond that way?

23 A. When we had started --

24 Q. Before you get started, would you read  
25 your response to the jury so they can remember what



W. Shaw - Direct

1 that said?

2 A. It's addressed to Investigator Adams  
3 and Special Agent Will Colton.

4 THE COURT: Didn't we read that this  
5 morning?

6 MR. BUGG: Does the jury remember what  
7 they said?

8 THE JURY: Your Honor, we remember what  
9 it said.

10 BY MR. BUGG:

11 Q. Mr. Shaw, why did you say, what you  
12 said in that response?

13 A. Mr. Adams was in it from -- he was in  
14 the case from the outset. Mr. Colton came in  
15 afterwards. What I wanted them for was to  
16 interview. In fact, we meant for them -- I wanted  
17 one to interview some witnesses, one to interview  
18 others. What I was concerned about was that if they  
19 did not look at this as a criminal prosecution then  
20 they might not be as sharp in investigating or they  
21 might not work as hard in investigating the case.  
22 That was the purpose of it, to pursue the case.  
23 It's a mind set that officers get. If they make up  
24 their mind about a case early on they don't work as  
25 hard. I had the same problem in the Fisher case.



W. Shaw - Direct

1 Q. What happened on March 27, 28 and 29,  
2 did you lose the cases?

3 A. Yes, sir.

4 Q. Is that the first case you ever lost?

5 A. No.

6 Q. It won't be the last one?

7 A. I would like to think it was but it  
8 won't be.

9 Q. Have you ever made a statement that you  
10 hope Mr. Ingles wins this case?

11 A. (Witness nodding head.)

12 MR. BAYLISS: You have to say yes.

13 THE WITNESS: Yes.

14 BY MR. BUGG:

15 Q. Why did you make that statement?

16 MR. BAYLISS: Why he made that  
17 statement is he hopes he wins the case.

18 MR. BUGG: He is entitled to explain.

19 MR. BAYLISS: First of all, he is  
20 leading the witness, did you make a statement.

21 MR. BUGG: He's obviously going to ask  
22 him.

23 THE COURT: Why did you say that since  
24 you are a criminal attorney prosecuting the case?

25 THE WITNESS: Of course, I know

W. Shaw - Direct

1 Mr. Ingles. I felt like that we were right in the  
2 criminal prosecution. The cases, one in particular,  
3 went because of mistakes that were made in court  
4 that I made.

5 MR. BAYLISS: Your Honor, we are going  
6 too far now.

7 THE COURT: Yes, we are.

8 MR. BAYLISS: He wants to take the  
9 blame for it. That ought to be stricken from the  
10 record.

11 THE COURT: So moved, stricken from the  
12 record.

13 BY MR. BUGG:

14 Q. Did you have any problems with a  
15 witness at the criminal trial?

16 A. Yes.

17 Q. Who was it?

18 A. Mr. Gerwick.

19 Q. What happened?

20 A. We were set to go three days. We  
21 had -- Mr. Gerwick lived in New Jersey.

22 THE COURT: What's that got to do with  
23 you being glad this man is going to win the case?

24 THE WITNESS: To accommodate the  
25 witness, Mr. Gerwick, I didn't have him come the

W. Shaw - Direct

1 first day of trial.

2 THE COURT: The question before you now  
3 is that you made a statement that you say you hope  
4 Ingles wins this case.

5 THE WITNESS: I don't believe that was  
6 his last question.

7 MR. BUGG: I asked a new question. The  
8 new question is what happened to the witness  
9 regarding one of the cases, and he started to talk  
10 about Mr. Gerwick.

11 THE WITNESS: I arranged with  
12 Mr. Gerwick to come in on lunch -- to be there  
13 before lunch on the second day of the trial and I  
14 would call him as a witness. He came in before  
15 lunch on the second day of the trial. He walked up,  
16 left some papers on my desk while I was examining  
17 other witnesses and left. He left and went to  
18 Florida. He was taking his family to Florida.

19 BY MR. BUGG:

20 Q. What was he necessary to prove --

21 MR. BAYLISS: He wasn't necessary to  
22 prove anything.

23 BY MR. BUGG:

24 Q. Was his --

25 MR. BAYLISS: He's leading.

W. Shaw - Direct

1 BY MR. BUGG:

2 Q. What effect did his departure have on  
3 the case?

4 MR. BAYLISS: He is speculating.

5 THE COURT: This man's question at this  
6 point is why did he say I want Ingles to win the  
7 case, the fact that some witness didn't appear in  
8 another case, the reason --

9 BY MR. BUGG:

10 Q. I asked a few questions. We'll come  
11 back. What effect did that witness leaving have on  
12 the case with --

13 MR. BAYLISS: I object.

14 THE COURT: Sustained.

15 BY MR. BUGG:

16 Q. Is there any problem with the form of  
17 the indictments?

18 MR. BAYLISS: The indictments are  
19 there. They speak for themselves. The cases were  
20 tried. The acquittals were given.

21 MR. BUGG: Mr. Bayliss doesn't want the  
22 jury to know.

23 THE COURT: The jury has already been  
24 told that the cases were dismissed, that they were  
25 heard and dismissed, not nol-prossed.

W. Shaw - Direct

1 MR. BUGG: They are entitled to know  
2 from the prosecutor's standpoint why.

3 THE COURT: It doesn't matter from his  
4 point why. The judge has heard the case or the jury  
5 or --

6 MR. BAYLISS: It was a judge.

7 THE COURT: And determined there was  
8 insufficient evidence to convict this man.

9 MR. BUGG: He is entitled to say why  
10 there was.

11 THE COURT: How about Judge Bateman  
12 telling you why there was insufficient if you want  
13 that in.

14 BY MR. BUGG:

15 Q. Back to the question, Mr. Shaw. Why  
16 did you make a statement that you hoped Mr. Ingles  
17 wins this case?

18 A. Like I said, I thought the criminal  
19 prosecution was right. Again, I think there were  
20 mistakes made.

21 MR. BAYLISS: Your Honor, object.

22 THE COURT: I sustain the objection,  
23 Mr. Bayliss.

24 BY MR. BUGG:

25 Q. Was the criminal prosecution your



W. Shaw - Cross

1 choice or Mr. Ingles choice?

2 A. My choice.

3 MR. BUGG: That's all I have.

4 THE COURT: Do you want to take a  
5 break?

6 THE JURY: Let's go.

7 CROSS-EXAMINATION

8 BY MR. BAYLISS:

9 Q. Mr. Shaw, Gloucester is a small  
10 community, correct?

11 A. Yes.

12 Q. Mr. Ingles you've known him for 19, 20  
13 years, correct?

14 A. Yes.

15 Q. Practiced law with him, you see him on  
16 a regular basis, correct?

17 A. Not on a regular basis, no, but I see  
18 him.

19 Q. Office is right across the street from  
20 you, right?

21 A. Yes.

22 Q. He works for the biggest law firm in  
23 Gloucester, right?

24 A. I guess so, yeah.

25 Q. His partner Flip Hicks was, in fact,

W. Shaw - Cross

1 president of the Bar when this was happening, right?

2 A. Correct.

3 Q. President of the State Bar?

4 A. Yes, sir. He was president of the  
5 State Bar. I don't know if it was when this was  
6 going on.

7 Q. Mr. Ingles is a man of influence in the  
8 community, isn't he, a wealthy man of influence,  
9 wouldn't you say? You know his reputation?

10 A. I would say so, sure.

11 Q. In this case as in any case, Mr. Shaw,  
12 you are a servant of the Commonwealth, correct?

13 A. Yes.

14 Q. Elected to serve the public, the public  
15 in general, right?

16 A. That's right.

17 Q. Not a single vested interest?

18 A. That's right.

19 Q. And as such you are paid to be  
20 objective?

21 A. Yes.

22 Q. Sir?

23 A. Yes.

24 Q. And as such when you investigate your  
25 cases you have your investigators such as Colton and

1 Adams who are also civil servants, correct?

2 A. Yes.

3 Q. Who are also objective, correct?

4 A. I would hope so.

5 Q. They are paid to be objective, are they  
6 not?

7 A. Yes, sir.

8 Q. And in this case you hire -- not hired  
9 but asked Colton and Adams to do the investigation  
10 for you, correct?

11 A. Certain parts of it.

12 Q. And this was the busiest time of your  
13 life back then, wasn't it?

14 A. Yes.

15 Q. And you didn't have time to do it all,  
16 did you?

17 A. No.

18 Q. And you really had three investigators  
19 in this case, you had Colton, you had Adams and you  
20 had Ingles and Steve Russell, correct?

21 A. I don't know about Mr. Russell.  
22 Mr. Ingles provided most of the information.

23 Q. Let's talk about Mr. Russell.  
24 Mr. Russell was Mr. Ingles' lawyer, right?

25 A. Yes.

W. Shaw - Cross

1 Q. And I took your deposition a while ago  
2 and went through your file in front of you?

3 A. You took my deposition.

4 Q. And went through your file with you and  
5 had you identify every jacket in your file?

6 A. Yes.

7 Q. And there were about 20 or 30 jackets  
8 in your file, correct, approximately?

9 A. Could be. I don't think it's that  
10 many.

11 Q. Let's say 10 or 15?

12 A. Sure.

13 Q. And of those 10 or 15 every single one  
14 of those jackets except one came from Mr. Russell,  
15 did it not?

16 A. From Mr. Russell?

17 Q. Mr. Russell's office.

18 A. Every single one but one came from  
19 Mr. Russell's office?

20 Q. Or Mr. Ingles' office.

21 A. Yes.

22 Q. One of the two?

23 A. Yes.

24 Q. You gave me your whole file that day.  
25 It had one jacket with your information?

W. Shaw - Cross

1 A. I also had trial binders.

2 Q. But the jackets are the information in  
3 your file?

4 A. There were a series of bank records  
5 that I got from various banks.

6 Q. Mr. Bugg asked you was it unusual for  
7 the alleged victim to attend the Grand Jury hearing  
8 and you didn't really answer it, so I'm going to go  
9 back so it. It is true, is it not, that it is most  
10 unusual to have the alleged victim attend the Grand  
11 Jury and testify?

12 A. It's unusual, yes.

13 Q. And in fact, it hadn't happened more  
14 than once in your career in an embezzlement case  
15 where the alleged victim went to the Grand Jury  
16 without anyone else and testified on his own?

17 MR. BUGG: I object to that, Your  
18 Honor, because the evidence was that Mr. Adams was  
19 in there with him.

20 THE COURT: No, sir. The Grand Jury  
21 indictment of 1990 was Mr. Ingles. Stay with the  
22 case. I'm following it a little better than you and  
23 you're trying it.

24 BY MR. BAYLISS:

25 Q. Never in your career have you ever seen



W. Shaw - Cross

1 an embezzlement case where the alleged victim went  
2 in that Grand Jury room and had at it, could say  
3 what he wanted when he wanted with absolute  
4 impunity, nobody would stop him, never happened, has  
5 it?

6 A. An embezzlement case?

7 Q. Right.

8 A. I can't recall any, no.

9 Q. And as a result of that time he was in  
10 there by himself and the Grand Jury returned an  
11 indictment?

12 A. Yes.

13 Q. And as a result of he and officer Adams  
14 being in there the Grand Jury returned five  
15 indictments?

16 A. Yes.

17 Q. That was in May of 1990. Sometime  
18 after that, after May of 1990, the people, the  
19 public servants that you described, the objective  
20 public servants came to you and said, Mr. Shaw,  
21 Mr. Shaw, don't go forward with this, this is a  
22 civil matter, remember that?

23 A. I have Exhibit 26 from Mr. Adams.

24 Q. I want you to remember, sir. I don't  
25 want you just to look at Exhibit 26 because you

W. Shaw - Cross

1 wrote Exhibit 27, not just to Mr. Adams, you wrote  
2 it to Mr. Colton and you wrote it to Mr. Adams?

3 A. That's because Mr. Adams was relaying  
4 something Mr. Colton told him.

5 Q. They came to you and told you not to  
6 prosecute?

7 A. They may or may haven't.

8 Q. Well, you wrote the letter, didn't you?

9 A. I can't say any more than it was based  
10 on the response to Adams' letter. I don't know  
11 whether they came or not. I see Adams' letter. I  
12 got the letter. Whether they also said it verbally  
13 I don't know, and I don't know why they were saying.

14 Q. You know why they said it, because they  
15 were investigating the case for you, right?

16 A. Yes, but by that time Adams hadn't done  
17 any more between the date he wrote the letter and  
18 the date I responded and he was basing it solely on  
19 two interviews Colton did.

20 Q. One thing you know he did a lot more  
21 than he did on May 7th when the indictments were  
22 returned, he had conducted additional interviews,  
23 hadn't he, sir?

24 A. I don't know.

25 Q. You don't know that?

W. Shaw - Cross

1           A.       He may have.

2           Q.       The more you investigate the case the  
3 more you find out about it, right?

4           A.       Yes.

5           Q.       And it's your duty as a public servant  
6 when you find out you shouldn't go forward with a  
7 case to stop it, correct?

8           A.       Sure.

9           Q.       And it's your duty as a public servant  
10 to gather all the information and to stop it if it's  
11 not a crime, right?

12          A.       That's right.

13          Q.       Because it's tough on the alleged  
14 defendant who is innocent until he's proven guilty  
15 in this country, it's tough on him, isn't it?

16          A.       It's tough on him and a waste of time  
17 for us.

18          Q.       Just like Adams said, it was a waste of  
19 time. I would hate to end up in civil court, right?

20          A.       He says what he says.

21          Q.       Let me read it to you. "I'm not trying  
22 to say Ingles has a legitimate argument" -- that's a  
23 typo. He meant to say -- "but is Ingles being  
24 straight with us." Somebody was questioning the  
25 credibility of the alleged victim, your investigator

W. Shaw - Cross

1 was?

2 A. Uh-huh.

3 Q. Right? You believed everything this  
4 man told you?

5 A. Yes.

6 Q. Every single thing he told you?

7 A. (Witness nodding head.)

8 Q. And when that trial was over you didn't  
9 believe everything he told you, did you? When that  
10 criminal trial was over you didn't believe  
11 everything he had told you in the beginning?

12 A. No.

13 Q. Are you telling me you believed every  
14 single word that he had told you in the beginning?

15 A. Yes.

16 Q. You believed that he was a hundred  
17 percent stockholder when that trial was over, is  
18 that what you are telling us?

19 A. What he told me before wasn't changed  
20 by anything that happened at the trial.

21 Q. That wasn't my question. He told you  
22 in the beginning he was a hundred percent  
23 stockholder?

24 A. And he told me about the option and  
25 treating Mr. Dively as a 50 percent stockholder.

W. Shaw - Cross

1 Q. He told you in the beginning he was a  
2 hundred percent stockholder?

3 A. He told me.

4 Q. Please answer the question, yes or no.

5 A. Yes, he did.

6 Q. And he never changed that from day one,  
7 never changed his testimony to you that he was a  
8 hundred percent stockholder, did he?

9 A. No.

10 Q. And you are telling me you still  
11 believe everything this man told you as you sit here  
12 today, you are telling me you still believe  
13 everything this man told you about this criminal  
14 investigation?

15 A. Yes. Of course, the shape he puts on  
16 it or whatever may be different.

17 Q. The shape?

18 A. The basic facts, how you interpret.

19 Q. What do you mean by the shape when  
20 someone's life is in jeopardy, his liberty in  
21 jeopardy, do you consider the shape somebody puts on  
22 it?

23 A. He could slant shape, he can say  
24 something, draw a conclusion from it, and that can  
25 turn out to be wrong but that didn't mean he lied



W. Shaw - Cross

1 about it.

2 Q. And you talked a little earlier on your  
3 examination about neutrality. Neutrality is  
4 important, isn't it?

5 A. Yes.

6 Q. And Mr. Colton and Mr. Adams were  
7 neutral, weren't they? They didn't have an interest  
8 in this case?

9 A. I don't think so, no.

10 Q. And you are not neutral as you sit here  
11 today, are you, you want Mr. Ingles to win this  
12 lawsuit? You want him to?

13 A. I hope he does.

14 Q. You are not neutral, are you? You hope  
15 he wins. You aren't neutral?

16 A. I'm not going to change my testimony to  
17 help him.

18 Q. You aren't neutral, are you?

19 A. In that regard, no.

20 Q. The scales of justice sitting there  
21 that you have in your office, and I've seen them,  
22 yours swings one way, doesn't it?

23 A. No. We're talking about what happens  
24 today, not about the criminal prosecution.

25 Q. We're talking about what's happening

W. Shaw - Cross

1 today.

2 A. Uh-huh.

3 Q. Does it matter to you when an alleged  
4 victim comes in your office, does it matter to you  
5 if he's telling you everything that he should be  
6 telling you about the case?

7 A. I would hope that he would.

8 Q. You would hope that he would tell you  
9 everything about the case?

10 A. Sure.

11 Q. And you hope they tell you the truth  
12 about everything?

13 A. Yes.

14 Q. And if you learn from the beginning he  
15 wasn't telling you the truth, you wouldn't prosecute  
16 somebody with an alleged victim who you knew could  
17 be impeached because he didn't tell the truth,  
18 right?

19 A. Probably not.

20 Q. And in fact, after that trial, after  
21 that trial you knew he had been impeached, didn't  
22 you?

23 MR. BUGG: Your Honor, that's not  
24 proper, trying to suggest to this witness that  
25 Mr. Ingles was impeached at the criminal trial.

W. Shaw - Cross

1 Your Honor has already instructed me that I can't  
2 get on what went on there at the criminal trial.

3 MR. BAYLISS: I'll rephrase the  
4 question.

5 MR. BUGG: You can't rephrase the  
6 question.

7 THE COURT: Maybe he can.

8 MR. BUGG: It's not proper to try to  
9 elicit what went on in the criminal trial. It's  
10 sauce for the goose again.

11 BY MR. BAYLISS:

12 Q. I'll rephrase. Do you remember  
13 subsequent to the trial when the Court dismissed the  
14 four indictments, do you remember telling anyone --  
15 telling anyone if you had known some of those things  
16 you wouldn't have gone forward?

17 A. No, I don't, but I don't know that I  
18 would have gone through all of it.

19 Q. You don't know what?

20 A. I would have gone through all of them  
21 but not for that. I don't think I would have  
22 proceeded with six of them again.

23 Q. You wouldn't have proceeded with a lot  
24 of them, right, because you found out some things,  
25 didn't you, didn't you, when the case was tried?

1           A.       When the case was tried?

2           Q.       Yeah.

3           A.       Not a whole lot I didn't know.

4           Q.       Let me ask you, sir, turn to the  
5 plaintiff's exhibit book. You said, and we talked  
6 about it a second ago, that if you knew your  
7 complaining witness, your alleged witness was not  
8 telling you the truth you wouldn't go forward. You  
9 wanted him to be credible. You wanted him to tell  
10 you all the facts to prosecute the case, and you  
11 said in your other testimony whether it was 50/50 or  
12 a hundred percent it didn't matter to you, right?

13          A.       Right.

14          Q.       It would matter --

15          A.       From the legal concept.

16          Q.       From the legal concept, that's what I  
17 was going to get into. It would matter to you,  
18 would it not, if one of them is telling you he's a  
19 hundred percent if he's not because it didn't matter  
20 to you he was 50 or not?

21          A.       Right.

22          Q.       What would matter to you is he wasn't  
23 telling you the truth, that's what would matter?

24                 MR. BUGG: I object to that because  
25 he's characterizing it as not telling the truth

W. Shaw - Cross

1 when, in fact, it was a legal dispute and the fact  
2 that dispute was resolved by Judge Foster.

3 THE COURT: Whether it was a legal  
4 dispute Ingles apparently told him he owned a  
5 hundred percent and there's some indication he  
6 didn't.

7 MR. BUGG: He's suggesting that when  
8 Mr. Ingles told him that he is lying and that is an  
9 improper question.

10 MR. BAYLISS: I am certainly suggesting  
11 Mr. Ingles is not forthcoming. Let there be no  
12 dispute on that.

13 MR. BUGG: It's an improper question.

14 THE COURT: Let's go on with something  
15 else. We have enough to talk about without sticking  
16 to that one thing.

17 BY MR. BAYLISS:

18 Q. Turn in the book, sir, to Number 7.  
19 It's the financial statement. Turn to Page 2. You  
20 said Mr. Ingles gave you the stock certificates,  
21 gave you the ledger sheet and gave you the stock  
22 option agreement, right?

23 A. Yes, copies of it.

24 Q. That's all he gave you, right?

25 A. About that or --



W. Shaw - Cross

1 Q. About the stock issue.

2 A. I think so.

3 Q. You are familiar, are you not, with  
4 financial statements?

5 A. Let me correct that. There was a  
6 deposition, either a deposition or bankruptcy,  
7 concerning Mr. Dively's testimony about ownership in  
8 the corporation but as far as proof of Mr. Ingles  
9 ownership I think that's probably it.

10 Q. Turn if you would to Page 2. You were  
11 aware, were you not, that there were 30 shares of  
12 stock outstanding at Sea Tech based upon what  
13 Mr. Ingles told you?

14 A. Right.

15 Q. I bet he didn't give you this financial  
16 statement, did he?

17 A. No. I saw it but not --

18 Q. You saw it because we subpoenaed it,  
19 right? The first time you saw it was when we  
20 subpoenaed it, right?

21 A. I guess. What I saw were M. If  
22 there's an M stamped on it.

23 Q. He didn't show you Page 2 where it says  
24 he owned 15 shares?

25 A. Well, I saw it.

W. Shaw - Cross

1 Q. He didn't give it to you?

2 A. No.

3 Q. It was subpoenaed by us?

4 A. Right.

5 Q. And that's how you saw it? We had to  
6 give it to you, didn't we?

7 A. No. You gave it in civil discovery and  
8 it came around to me.

9 Q. You got it in the civil discovery?

10 A. This was one of the items which I  
11 presume came from -- somebody gave it to me. We had  
12 appeared for one of the cases -- that may be  
13 Mr. Dively's financial statement.

14 Q. Let me refresh your recollection. It  
15 was subpoenaed in the criminal case and it was in  
16 the file in the criminal case and it was subpoenaed  
17 by us. Remember that? Remember Mr. Ingles going  
18 bananas on the stand when I said how did you get  
19 this?

20 MR. BUGG: That's not proper. Would  
21 you instruct the jury.

22 THE COURT: I instruct the jury to  
23 disregard he was going bananas.

24 BY MR. BAYLISS:

25 Q. Do you remember Mr. Ingles objecting to

W. Shaw - Cross

1 this financial statement being in the file?

2 MR. BUGG: Whether Mr. Ingles objected  
3 to it is not relevant. What man wouldn't object --

4 THE COURT: I sustain the objection.  
5 Let's get on.

6 BY MR. BAYLISS:

7 Q. Let's move on to in your many, many  
8 meetings with Mr. Ingles. Look at Exhibit 18. He  
9 never showed you his K-1 that showed he was a 50  
10 percent owner, did he, the form he filed with the  
11 Federal government, never showed you that, did he?

12 A. I don't know whether I saw it. I knew  
13 about it.

14 Q. Well, Mr. Ingles never gave you it, did  
15 he?

16 A. No, but he told me about it.

17 Q. He told you about his K-1?

18 A. He told me about the tax returns that  
19 were made and that was a 50 percent -- that may have  
20 been the tax return.

21 Q. He never told you that he filed a K-1  
22 with 50 percent on it, did he?

23 A. I don't think so, but he said there was  
24 a problem with one of the tax returns.

25 Q. Now, let's move on.

W. Shaw - Cross

1           A.       Mr. Bayliss, I can't say for sure he  
2       didn't. I remember seeing some tax materials.  
3       Whether I got that from Mr. Ingles or got it from  
4       Mr. Eaton --

5           Q.       If you want --

6           A.       I gave you an answer saying he never  
7       showed it to me. I saw some tax materials. I don't  
8       know whether it was there. I knew there was  
9       something about 50 percent versus a hundred  
10      percent. I don't know where I got it.

11          Q.       Ingles told you from day one he was a  
12      hundred percent owner?

13          A.       He also told me up to that point he was  
14      treating Mr. Dively as a half owner.

15          Q.       But he told you he owned a hundred  
16      percent of the stock?

17          A.       He showed me the certificate showing he  
18      owned a hundred percent.

19          Q.       But didn't show you the other things  
20      showing he was 50 percent?

21          A.       There was a stock ledger. I think  
22      there was another issuance of another fifteen or  
23      whatever.

24          Q.       Now, this case -- he brought this  
25      continuance. In fact, it was continued in

W. Shaw - Cross

1 November. It was continued in January and it was  
2 tried in March, right?

3 A. Right.

4 Q. So it took three times to go to trial?

5 A. Right.

6 Q. And each time Mr. Dively had to show  
7 up, no one told him it was going to be continued,  
8 did they?

9 A. (Witness shaking head.)

10 Q. This all happened at the courthouse the  
11 morning of the trial, right?

12 A. Yes, sir, as far as I know.

13 Q. And one time it was continued because  
14 Mr. Russell and Mr. Ingles before the trial started  
15 came up to you and started whispering in your ear  
16 and gave you documents, do you remember that?

17 A. That's the November case, that's not  
18 the basis of the continuance. You objected to that.

19 Q. You remember that?

20 A. I remember the act itself.

21 Q. And these were documents you had never  
22 seen before, right?

23 A. Right.

24 Q. And you tried to put them into evidence  
25 and we objected?



W. Shaw - Cross

1 A. The case never started.

2 Q. Because it got continued?

3 A. It got continued.

4 Q. Because there was new evidence they  
5 brought to you the day of the trial?

6 A. The continuance was a witness problem.  
7 That issue came up, Mr. Bayliss.

8 MR. BUGG: It's in the order.

9 BY MR. BAYLISS:

10 Q. The order says what it says, but you  
11 very well remember what I just said to you happened  
12 and that was one of the reasons the case got  
13 continued?

14 A. I got information from either  
15 Mr. Ingles or Russell -- I think it was  
16 Mr. Russell. It came up on the morning of the trial  
17 but I needed a continuance in two of them anyway and  
18 you objected to my having that evidence.

19 Q. That new evidence?

20 A. Yes, sir.

21 Q. I objected to it?

22 A. Yes, sir.

23 Q. I hadn't seen it before, had I?

24 A. I think -- I understood it came from  
25 you.

W. Shaw - Cross

1 Q. The new evidence?

2 A. Through civil discovery.

3 Q. You have an open book policy in your  
4 office, right?

5 A. Yes.

6 Q. You let the lawyers that defend people  
7 that are accused of crimes come in and look at the  
8 file?

9 A. Yes.

10 Q. And that's so they can properly --

11 A. Not the absolute file other than you  
12 get under normal.

13 Q. This Jane Hogge memo, I'm not going to  
14 turn to it, you testified about it earlier. Your  
15 recollection, sir, is that when the indictment  
16 occurred in May of 1990 and July of 1990 you didn't  
17 have the Jane Hogge memo in your file, that is your  
18 recollection, is it not?

19 A. In May?

20 Q. In May?

21 A. No. I'm almost sure I didn't.

22 Q. And in July when the Pelican Harbor  
23 indictment came in you didn't have it?

24 A. I'm sure I didn't.

25 Q. And Mr. Ingles got it to your file

W. Shaw - Cross

1     sometime after that, either Mr. Ingles or  
2     Mr. Russell?

3             A.       Mr. Ingles did.

4             Q.       And he told you when he got it to you  
5     that the two Dively memos had been stapled to it,  
6     right?

7             A.       He may have. I assumed they were, so  
8     maybe I'm assuming something that he didn't say.

9             Q.       So somebody must have taken them apart,  
10    right?

11            A.       I guess. I don't know.

12            Q.       You didn't take them apart? You  
13    already had the Dively memos --

14            A.       If I remember I already had the Dively  
15    memo.

16            Q.       So you didn't pull them apart and when  
17    it says --

18            A.       No.

19            THE COURT: It would be helpful to  
20    her --

21            THE WITNESS: No. I didn't pull them  
22    apart.

23    BY MR. BAYLISS:

24            Q.       And when it finally made its way over  
25    to you to invoice Marina Tech, see attached sheet

W. Shaw - Cross

1 for breakdown, nothing was attached with it,  
2 somebody had pulled it off?

3 A. I think I already -- I'm almost  
4 positive I already had it.

5 Q. Already had what?

6 A. The Dively.

7 Q. But it doesn't say, see Dively -- go  
8 ahead. You already had the Dively --

9 A. I already had what I call the Dively  
10 memo which is the two page handwritten memo. The  
11 Hogge memo is, of course -- the confusion with the  
12 Hogge was the number of pages. I think you or  
13 Mr. McDaniel, Mr. Harmon said there's a 19 page memo  
14 that we couldn't find. I said, Mr. Ingles, this is  
15 what they are saying, and what we came up with was a  
16 memo that Jane Hogge did that was about 12 pages or  
17 13 pages and I finally verified with Jane Hogge, are  
18 we talking about the same memo.

19 Q. Jane Hogge told you in the very first  
20 meeting she had with you, told you she prepared a  
21 list of things to be invoiced?

22 A. But I didn't have a meeting with her  
23 until long after the indictments.

24 Q. I'm talking about before November,  
25 before the trial, she told you right away I prepared

W. Shaw - Cross

1 a memo?

2 A. She may have.

3 Q. And we asked you -- Mike Harmon asked  
4 you, we've got to have the Hogge memo and you kept  
5 saying it's not in the file, it's not in the file?

6 A. Right.

7 Q. And all of a sudden it appeared in your  
8 file, all of a sudden it appeared in your file,  
9 correct?

10 A. Correct.

11 Q. And nothing was attached to it,  
12 correct?

13 A. I can't say it was or wasn't, and the  
14 reason I say that, Mr. Bayliss, is because I got --  
15 I've got now three copies of the Dively memo. I  
16 can't say I got one and then I got a corrected  
17 memo. I remember having to go back to Jane Hogge  
18 when I realized there were different copies and  
19 asked her to explain it if she could.

20 Q. And you said on direct examination you  
21 wondered whether it had been recreated after the  
22 fact so you discounted it, that's what you said,  
23 something like that?

24 A. No. It was created, not recreated. It  
25 was created.



W. Shaw - Cross

1 Q. After the incidents?

2 A. Yes.

3 Q. Before he left, March 1 was the date on  
4 it?

5 A. I don't know -- that's not what I  
6 meant. What I meant was he had these dealings in  
7 two or three months before that.

8 Q. And you felt -- you said earlier --

9 A. Two or three months they are actually  
10 dated. I didn't know when he had done it. I  
11 assumed the dates on those are correct dates as to  
12 when he prepared them.

13 Q. And you felt -- you discounted Jane  
14 Hogge's testimony because you said she worked for  
15 Dively?

16 A. I didn't discount it. Well, all right.

17 Q. I think that's what you said.

18 A. I didn't disregard. I discounted.

19 Q. I said discount.

20 A. That's correct.

21 Q. Because you didn't feel she was  
22 neutral?

23 A. Right.

24 Q. Did you think Mac Ingles was neutral?

25 A. No, but people in his position usually

W. Shaw - Cross

1 are.

2 Q. People in his position, alleged  
3 victims?

4 A. Yes.

5 Q. And defendants, they're not neutral  
6 either, are they?

7 A. No, they're not.

8 Q. But you didn't discount a thing he told  
9 you, not one thing, believed every single word he  
10 told you?

11 A. I believed him, sure.

12 Q. Did Mac Ingles tell you -- during the  
13 course of this investigation did he ever tell you  
14 that he had been down to South Carolina before,  
15 before the trial ever occurred, and told Gary Taylor  
16 that he had gotten felony convictions against Bob  
17 Dively, did he ever tell you that?

18 A. Mr. Ingles?

19 Q. Yes.

20 A. No. That he told somebody else, no.

21 Q. Did he ever tell you that he went down  
22 and told Gary Taylor that Bob Dively had been led  
23 off in handcuffs?

24 A. Did Mr. Ingles tell you he told  
25 somebody that?

W. Shaw - Cross

1 Q. Right.

2 A. No.

3 Q. Did he ever tell you that he told  
4 Frieda Cox -- you knew who Frieda was?

5 A. Yes.

6 Q. Ingles told you Frieda would be a good  
7 witness, didn't he?

8 A. Initially, yes.

9 Q. He said you've got to have Frieda here  
10 because she's going to help get Dively?

11 A. He thought Frieda would help.

12 Q. Did Mac Ingles ever tell you that he  
13 had met with Frieda Cox and said the following  
14 things: I'm going to have that fucking bastard  
15 locked up, I will not stop until the bastard is  
16 buried, I have my ways of doing that. Did he ever  
17 tell you that?

18 A. No, sir.

19 Q. You found out when you called Frieda  
20 that you didn't really want to use her as a witness  
21 and you released her, right?

22 A. I met with her. I finally caught up  
23 with her.

24 Q. The morning of trial you got her in a  
25 little room back there and said, Frieda, what do you

W. Shaw - Cross

1 know about that?

2 A. It was on the day of the January  
3 continuance and --

4 Q. And then you said, I don't want any  
5 part of Frieda despite what Mac had told you?

6 A. Frieda couldn't add anything. She also  
7 told me she was going on vacation, please don't  
8 interrupt my vacation.

9 Q. Did Mac Ingles ever bother to tell you  
10 during the course of any of that criminal  
11 investigation about his discussions with his  
12 psychics regarding the sale of the business?

13 A. No.

14 Q. Did you know Mac went to a psychic on a  
15 regular basis?

16 A. At that time?

17 Q. Yes.

18 A. No.

19 Q. You found out later, too, didn't you?

20 A. I think it was sometime during the  
21 civil trial I think you said it.

22 Q. Turn if you would to in our book,  
23 plaintiff's book, Number 30 now, again. You are a  
24 civil servant and you don't take sides in civil  
25 litigation, do you?

W. Shaw - Cross

1 A. In civil litigation?

2 Q. Right.

3 A. Usually I don't care.

4 Q. Usually you don't care but today you  
5 care?

6 A. Simply because I know one of the  
7 parties.

8 Q. That's not the only reason you care, is  
9 it, just because you know him?

10 A. Pardon me?

11 Q. That's not the only reason you care?

12 A. No, it's what I said before.

13 Q. And look at the affidavit on Exhibit  
14 30. There came a time -- there are two there, one  
15 is unexecuted and one is signed. There came a time,  
16 did there not, that Mr. Bugg or Mr. Russell came to  
17 you --

18 A. 30 is unsigned.

19 Q. We'll do them one at a time. I want  
20 you to look at the top one. There came a time that  
21 Mr. Bugg came to you in this case after the criminal  
22 case was over, came to you in this case, Robert C.  
23 Dively versus McClanahan Ingles, and asked you to  
24 sign an affidavit?

25 A. Yes.



W. Shaw - Cross

1 Q. Have you ever been asked to sign an  
2 affidavit in a civil case before?

3 A. I don't think this is the first time  
4 but it's very rare.

5 Q. And you wouldn't sign it, would you?

6 A. No.

7 Q. Because it wasn't true, was it? They  
8 tried to put something in front of you that wasn't  
9 true and asked you to sign it, right? Just look at  
10 the first one, Mr. Shaw, we'll get to the second  
11 one.

12 A. The answer is no, I didn't.

13 Q. You didn't sign it?

14 A. I wouldn't characterize it the way you  
15 have, but no, I didn't sign it.

16 Q. They wanted you to swear under oath  
17 that everything in that affidavit had happened,  
18 correct?

19 A. Yes, sir.

20 Q. And it wasn't true, was it?

21 A. No.

22 Q. And you wouldn't sign it because of  
23 that?

24 A. I was not comfortable giving an oath at  
25 this information. The first affidavit was true.



1 can, and I think that's beautiful. You are not the  
2 Henry Clay of this world but you come close. Bring  
3 them on in.

4 (The jury was returned to the  
5 courtroom.)

6 THE COURT: All right.

7 MR. BUGG: Do you want to explain to  
8 the jury what a stipulation is?

9 THE COURT: Ladies and gentlemen, what  
10 he is going to do is read to you a small, short  
11 statement which is stipulated to and a stipulation  
12 being this: Mr. Bayliss and Mr. Bugg have agreed  
13 that if this witness that he is going to read this  
14 testimony to you were present he would say this.  
15 This is what he would say if he were sitting in this  
16 chair and I want to advise you that you shall pay  
17 the same attention to it, give it as much  
18 consideration as if that person were actually here  
19 in court.

20 MR. BUGG: Thank you, Your Honor. This  
21 is called the stipulation of Larry Sietzman. "Larry  
22 Sietzman was the authorized representative of  
23 Pelican Harbor Marina in Palm Bay, Florida, for the  
24 purchase of marina products.

25 "Mr. Sietzman first met Mr. Dively at

**603A**

1 the Miami Boat Show in February of 1990. At the  
2 Miami Boat Show there was on display in the Sea Tech  
3 booth a dock box.

4 "At the boat show Mr. Sietzman informed  
5 Mr. Dively that he was interested in approximately  
6 28 marina power units. Dively quoted the pedestal  
7 units at \$575 per unit and quoted dock boxes at \$675  
8 per unit.

9 "At the Miami Boat Show Seitzman was  
10 not aware of the existence of Marina Technology or  
11 that the dock box was Dively's personal venture.

12 "At the boat show Dively provided  
13 Mr. Sietzman with a Sea Tech Docksider brochure with  
14 Dively's handwritten notations of prices quoted. A  
15 copy of this brochure is attached hereto as Exhibit  
16 A. The notations regarding the meters are those of  
17 Mr. Sietzman which Mr. Sietzman wrote during his  
18 conversations with Mr. Dively at the boat show.

19 "On February 22, 1990 a proposal for 28  
20 dock boxes was telefaxed to Mr. Sietzman. It's  
21 attached as Exhibit B.

22 "After receiving the February 22, 1990  
23 proposal Mr. Sietzman contacted Mr. Dively and  
24 inquired that the price per unit was not the price  
25 quoted by Mr. Dively at the boat show and as

**603B**



1 indicated on Exhibit A. Mr. Dively advised  
2 Mr. Sietzman that he could build the box at his  
3 other company for the original quoted price of  
4 \$675.

5 "Sometime during his early negotiations  
6 with Mr. Dively, Mr. Sietzman received in the mail a  
7 photo of a dock box sent by Mr. Dively. It's  
8 attached as Exhibit C.

9 "On March 7, 1990 Marina Technology  
10 sent to Mr. Sietzman a proposal for 28 dock boxes at  
11 the price of \$675 per unit. A true copy of the  
12 proposal is attached hereto as Exhibit D.

13 "After receiving the proposal from  
14 Marina Technology Mr. Sietzman called the Marina  
15 Tech number listed on the proposal to inquire about  
16 the connection between Marina Technology and Sea  
17 Technology. He did not speak with Mr. Dively at  
18 this time but spoke with a lady answering the  
19 telephone for Marina Tech. At this time  
20 Mr. Sietzman wanted confirmation that he was still  
21 dealing with Bob Dively concerning the purchase of  
22 the dock boxes similar to those displayed at the  
23 Miami Boat Show. He was not overly concerned with  
24 the name of the specific company producing the boxes  
25 as long as the boxes were identical to those

603C

1 displayed at the Sea Technology booth in Miami in  
2 February of 1990 and available at the boat show  
3 price.

4 "Pelican Harbor accepted the proposal  
5 attach as Exhibit D and sent a requested deposit  
6 check to Marina Technology, Inc. dated March 8th,  
7 1990 in the sum of \$4,725. A copy of this deposit  
8 check is attached hereto as Exhibit E.

9 "Marina Technology, Inc. shipped 28  
10 dock boxes to Pelican Harbor on or about May 4,  
11 1990. A true and correct copy of the invoice  
12 accompanying this shipment is attached hereto as  
13 Exhibit F.

14 "The 28 dock boxes delivered to  
15 Mr. Sietzman were the same type and design as  
16 depicted in the photographs as Exhibit C.

17 "The meters for the 28 dock boxes were  
18 not included in the original shipment but were  
19 supplied by Mr. Dively at a later date.

20 "All the meters were received by  
21 Pelican Harbor.

22 "Mr. Sietzman made full payment to Sea  
23 Technology for all sums listed on the invoice  
24 attached as Exhibit F. The check for the balance is  
25 the bottom check on Exhibit E."

**603D**



M. Ingles - Direct

1 office in this court?

2 MR. BAYLISS: We'll stipulate that's a  
3 pleading filed in this court.

4 MR. BUGG: I move it in.

5 THE COURT: It will be marked as  
6 Defendant's Exhibit 79.

7 (The document referred to was marked  
8 for identification by the Court as Defendant's  
9 Exhibit 79.)

10 THE COURT: Bring the jury back in.

11 (The jury was returned to the  
12 courtroom.)

13 BY MR. BUGG:

14 Q. Mr. Ingles, you live in Gloucester?

15 A. Yes.

16 Q. You practice law in Gloucester?

17 A. Yes.

18 Q. How long have you been practicing law  
19 in Gloucester?

20 A. 19 plus years.

21 Q. How many lawyers are in your firm?

22 A. Three.

23 Q. What type of practice do you have?

24 A. General practice, domestic relations  
25 and real estate probably comprise the better part of

M. Ingles - Direct

1 my practice.

2 Q. Do you do much criminal work?

3 A. None. Misdemeanors and traffic, that  
4 type of thing. I don't think I've handled a felony  
5 case for maybe eight, ten years, something like  
6 that.

7 Q. Are you married?

8 A. Yes. I'm married. I have three  
9 children. I met my wife over here in Williamsburg.  
10 She was teaching school in the eighth grade. I have  
11 kids five years old, three years old and one year  
12 old.

13 Q. How long have you known Bill Shaw?

14 A. About when I started practicing.

15 Q. How would you characterize your  
16 relationship with Bill Shaw?

17 A. He's an attorney in the community.  
18 We're not close. He's never been to my house and  
19 I've never been to his. I couldn't even give you  
20 directions to his house.

21 Q. When did you meet Mr. Dively and how?

22 A. I met him when his firm DGR Engineering  
23 was doing the design work for Willoughby Harbor  
24 Marina back in the early '80s.

25 Q. Who was he working for then?

M. Ingles - Direct

1           A.       He was working for DGR. He represented  
2 himself to be an engineer.

3           Q.       Did he tell you about any problems,  
4 financial problems that DGR was having?

5           A.       No. He said things were booming. They  
6 were going to open up an office in Hampton. He was  
7 living in King's Mill, was tired of commuting to  
8 Ashville and he would like to have an office.

9           Q.       What did he do at Willoughby Harbor?

10          A.       His firm designed it and he oversaw the  
11 construction.

12          Q.       When was Sea Technology formed?

13          A.       '84.

14          Q.       How did that come about?

15          A.       In building the marina we were looking  
16 around looking for power pedestals. There were only  
17 a couple of companies making them and they seemed to  
18 be overpriced and not very good designs so Bob sat  
19 down and designed this pedestal. It looked like a  
20 good design. He came to me with the idea. He is  
21 very talented.

22          Q.       In 1984, '85, '86 what was the  
23 relationship like between you and Mr. Dively?

24          A.       I thought we were pretty close. We did  
25 a lot of things together. I got married in 1985 and

M. Ingles - Direct

1 asked him to be in my wedding. He was in the  
2 wedding. His daughter was real young then. She was  
3 about three years old. She was the flower bearer in  
4 the wedding. We went fishing together and  
5 occasionally had a little bit of alcohol together  
6 and we socialized a fair amount.

7 Q. What was business like then?

8 A. It was slow starting like any business,  
9 but we turned a small investment into what looked  
10 like a real good thing. Things started booming in  
11 '87, '88. We went from like \$100,000 in 1986, the  
12 next year we grew to about \$770,000, the next year  
13 the company made \$2.2 million, and the next year  
14 which was 1989 it made I think it was \$1.8 million.

15 Q. Let me direct your attention to 1988.  
16 Did your relationship with Mr. Dively start to sour  
17 then?

18 A. Yeah, it did. There seemed to be some  
19 distance.

20 Q. Can you put your finger on any  
21 particular point when it started turning downhill?

22 A. I was with him when he was arrested in  
23 North Carolina. He had been down there and tried to  
24 run over a State Trooper.

25 MR. BAYLISS: Your Honor, this was a

M. Ingles - Direct

1 traffic viol -- this man is a lawyer.

2 THE COURT: Ladies and gentlemen, you  
3 will disregard, completely disregard, any statement  
4 about him running over a State Trooper.

5 MR. BAYLISS: And I would ask, Your  
6 Honor, this is a traffic violation. He knows it was  
7 a simple traffic violation. He sits here and tries  
8 to prejudice this jury.

9 THE COURT: I understand.

10 MR. BUGG: Your Honor --

11 THE COURT: Was it a traffic  
12 violation?

13 MR. BUGG: It was a traffic violation.

14 THE COURT: It was a traffic violation,  
15 nothing more.

16 MR. BUGG: But the reason I asked him  
17 the question, Your Honor --

18 MR. BAYLISS: That's enough. Judge, I  
19 don't want him proffering. He's talking for the  
20 record. The reason he asked the question was to  
21 prejudice the jury.

22 THE COURT: I think his statement about  
23 trying to run over the State Trooper is very, very  
24 out of line.

25 MR. BUGG: Mr. Dively made a statement



M. Ingles - Direct

1 to him in connection with this case is why I opened  
2 this question. I think I'm entitled to ask him what  
3 Mr. Dively said to him in connection with this case  
4 and asked him to do.

5 MR. BAYLISS: With what case?

6 MR. BUGG: Let me approach the bench,  
7 Your Honor.

8 (A conference was held at the bench.)

9 THE COURT: I'm not going to permit  
10 it. Note your exception. Let's get on with it.

11 BY MR. BUGG:

12 Q. In 1988 and 1989 how did business at  
13 Sea Tech progress?

14 A. It was good, really good.

15 Q. In 1989 did you become aware of Marina  
16 Tech?

17 A. Yes. I was down at Sea Technology one  
18 day and I saw a check on Bob's desk. This was in  
19 the summer or early fall I would think of 198 --

20 MR. BAYLISS: I would ask him to answer  
21 the question. This is obviously a script. He said  
22 was he down at Marina Tech one day and he's not  
23 answering the question.

24 THE COURT: Answer the question put to  
25 you without --

M. Ingles - Direct

1 BY MR. BUGG:

2 Q. How did you become aware of Marina Tech  
3 and the existence of that company?

4 A. I saw a check.

5 Q. Did you have any conversations with  
6 Mr. Dively about what Marina Tech was?

7 A. Yes.

8 Q. What was the substance of that  
9 conversation?

10 A. I asked him what Marina Tech was.

11 Q. What did he say?

12 A. He said that Marina Tech was something  
13 that he had formed that he might use in the future.

14 Q. Who is Rick Risley?

15 A. He is an individual who came in to work  
16 for me at Sea Tech after Bob left.

17 Q. When did you first meet him?

18 A. I met him in 1988 or '89, '88 I think.

19 Q. What was the purpose of your meeting?

20 A. He was interested in buying Sea Tech.

21 Q. Over what period of time was his  
22 interest in Sea Tech ongoing, buying Sea Tech?

23 A. From then until early 1990.

24 Q. Did you have a meeting with Mr. Risley  
25 in February of 1990 about a possible sale?

M. Ingles - Direct

1 A. Yes. I had two meetings with him.

2 Q. What was the substance of those  
3 meetings and was Mr. Dively there?

4 A. The first meeting -- excuse me -- the  
5 substance was the acquisition. Mr. Dively was not  
6 there for one meeting. He was there for the other  
7 meeting.

8 Q. Let me direct your attention to the  
9 meeting at which Mr. Dively was present. Was there  
10 any discussion about a royalty agreement?

11 MR. BAYLISS: Mr. Risley is under  
12 subpoena and is going to testify. I would ask him  
13 not to say anything about what Mr. Risley said.

14 THE COURT: The question is was there  
15 any discussion, not what the discussion was but was  
16 there any discussion.

17 MR. BAYLISS: And my objection is  
18 Mr. Ingles knows the hearsay rules.

19 THE COURT: I understand that. Let's  
20 see what the next question is. That question is  
21 proper. Was there a discussion?

22 THE WITNESS: Yes.

23 BY MR. BUGG:

24 Q. Did Mr. Dively say anything in your  
25 presence about the dock box?

M. Ingles - Direct

1 A. No.

2 Q. Were you aware at that time that  
3 Mr. Dively was building a dock box at Sea Tech?

4 A. No.

5 Q. Were you aware that Mr. Dively had sold  
6 a dock box to customers at Sea Tech at that time?

7 A. Not that dock box, another dock box,  
8 yes.

9 Q. About that time was Bob Dively telling  
10 you anything about the financial condition of the  
11 company?

12 A. Yeah. He said things were miserable.  
13 We didn't have any orders.

14 Q. What did you find out after he left  
15 about orders?

16 A. We had \$300,021 worth of orders and  
17 within a week or ten days we had enough to be over  
18 \$400,000 in orders.

19 Q. Now, Mr. Dively has testified about the  
20 dock box that he was building. Had Sea Tech ever  
21 built a dock box before?

22 THE COURT: I have asked you before,  
23 don't comment on what some other witness said in  
24 asking questions.

25 BY MR. BUGG:

M. Ingles - Direct

1 Q. Had Sea Tech ever built a dock box  
2 before December of 1989?

3 A. Yes. We started making dock boxes at  
4 Sea Tech back in 1986 I believe.

5 Q. Let me show you what's been marked as  
6 Exhibit Number 42. What is that?

7 A. That's the design of the dock box, a  
8 Sea Tech dock box.

9 Q. Could you find a date on it?

10 A. September 5, 1987.

11 MR. BUGG: I move its admission, Your  
12 Honor.

13 THE COURT: Introduced and marked as  
14 Defendant's Exhibit 42.

15 (The document referred to was marked by  
16 the Court as Defendant's Exhibit 42, and received  
17 into evidence.)

18 BY MR. BUGG:

19 Q. Who is Floyd Bishop?

20 A. Floyd Bishop is an individual from  
21 Meadville, Pennsylvania who was interested in buying  
22 Sea Tech.

23 Q. When did you first meet him?

24 A. 1988.

25 MR. BAYLISS: Your Honor, I've never



M. Ingles - Direct

1           A.       Mr. Dively told me that Mr. Bishop  
2 wasn't interested anymore.

3           Q.       Did anything occur in connection with  
4 that sale in connection with a letter of credit?

5           A.       A subsequent sale, the one in February  
6 of 1990 when Mr. Bishop was interested in the  
7 company again, yes, there was an offer made and  
8 Mr. Dively and I discussed the offer. We were  
9 supposed to hold a certain amount of paper between  
10 the two of us and we had discussed that we should  
11 secure that, require that it be secured with a  
12 letter of credit as we had done with the licensee  
13 agreement and told Mr. Dively not to let that kill  
14 the deal.

15          Q.       Did Mr. Dively tell you that while he  
16 was negotiating with Mr. Bishop selling Sea Tech he  
17 was also negotiating to sell the assets of Marina  
18 Tech?

19          A.       No.

20          Q.       When did you find out that Bob had left  
21 the company and how?

22          A.       I found out on I believe it was the  
23 12th of March through my secretary.

24          Q.       What did you do?

25          A.       I telephoned Rick Risley in

M. Ingles - Direct

1 Philadelphia and asked him to come in to try to run  
2 the company because I knew nothing about running a  
3 manufacturing company. I never had any experience  
4 in that.

5 Q. What did you do about the company  
6 itself right away?

7 A. I called Jane Hogge and I was preparing  
8 for something -- I think it was a trial in another  
9 county -- and I said, Jane, I can't get down there  
10 for a couple of days, and I said, is everything  
11 fine, and she said, everything is fine.

12 MR. BAYLISS: I really ask --

13 THE COURT: What harm is it?

14 MR. BAYLISS: It's no harm, but Lord  
15 only knows what Jane said.

16 BY MR. BUGG:

17 Q. Did you go down there a couple of days  
18 later?

19 A. Yes.

20 Q. What did you find?

21 A. At that point things were in chaos.  
22 Files were a mess. I found out there was some  
23 equipment missing and I had more conversations with  
24 Jane Hogge. At that point she said it was wrong for  
25 Bob to take Sea Tech product.

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1 MR. BAYLISS: Your Honor.

2 MR. BUGG: Your Honor, this is not --

3 THE COURT: Let's get on with it. I'm  
4 going to let it in.

5 BY MR. BUGG:

6 Q. After you were down there on the 15th  
7 and found that tools were missing did you write a  
8 letter to Mr. Dively's lawyer?

9 A. Yes. I immediately went back and I  
10 wrote Mr. Bayliss and I asked for the return of the  
11 equipment and inventory that Mr. Dively had.

12 Q. Flip over to Exhibit 30. Is that it?

13 A. Yes. That's the letter.

14 MR. BUGG: I think that's already in,  
15 Your Honor.

16 MR. BAYLISS: It's one of the ones that  
17 hasn't come in. It's marked Plaintiff's 14 and  
18 Defendant's 30 in the book.

19 THE COURT: Has it been put in evidence  
20 as the plaintiff?

21 MR. BAYLISS: No, sir, it hasn't, so it  
22 ought to be put in to keep the record straight. I  
23 wouldn't mind. Here is Plaintiff's 14. It's  
24 already come in as Defendant's.

25 THE COURT: Already in.

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1 BY MR. BUGG:

2 Q. As a result of that letter was anything  
3 returned to the company?

4 A. No. I said if it wasn't returned in  
5 seven days I consider it to be converted and nothing  
6 came back in seven days.

7 Q. What does converted mean?

8 A. It means convert to your use without  
9 paying for it.

10 Q. In talking to Jane Hogge did she tell  
11 you anything about a dock box?

12 MR. BAYLISS: Maybe Mr. Bugg -- I know  
13 you want to get it on but why doesn't Mr. Bugg tell  
14 what Jane Hogge said instead of him? It's hearsay.

15 THE COURT: I sustain the objection.  
16 Let's get on the with the case, Mr. Bugg.

17 MR. BUGG: Your Honor, what Ms. Hogge  
18 says to him goes to his state of mind which is what  
19 this case is about.

20 THE COURT: Mr. Bugg, I have ruled,  
21 sir, that we are going to get on with the case. I  
22 hate to do this, but I don't know any other way to  
23 get this case over with.

24 BY MR. BUGG:

25 Q. Did you ask Ms. Hogge to make a list of

M. Ingles - Direct

1 customers?

2 A. Yes, I did. I wanted to see when  
3 people had ordered product and what we needed to get  
4 out the door.

5 Q. Look over to Defendant's Exhibit Number  
6 62. Is that the list that Jane Hogge made?

7 A. Yes, it is.

8 Q. What was the total of orders that were  
9 actually in-house?

10 A. It was \$320,798.

11 Q. What kind of profit did that represent  
12 to the company?

13 A. We usually take about a third to the  
14 bottom line, about \$100,000 roughly.

15 Q. Did you have any discussion with  
16 Ms. Hogge about whether any notes had been left  
17 behind by Mr. Dively about billing him for materials  
18 and labor and so forth?

19 A. No, I didn't. I didn't ask her were  
20 there any billings and she didn't offer.

21 MR. BUGG: I move Number 62 in.

22 THE COURT: Introduced and marked if it  
23 hasn't already been as Defendant's Exhibit 62.

24 (The document referred to was marked by  
25 the Court as Defendant's Exhibit 62, and received



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1 into evidence.)

2 BY MR. BUGG:

3 Q. On Saturday, March 17th, did you work  
4 in the office?

5 A. Yes, I did. I went down there and I  
6 was alone at the office that day.

7 Q. And the next day, March 18th, did you  
8 do something with the family?

9 A. I took them to the Living Museum in  
10 Newport News, came back.

11 Q. About what time?

12 A. Close to 5:00. When I passed Sea Tech  
13 I saw a vehicle in front of Sea Tech.

14 Q. What did you do?

15 A. I turned around and went back. I found  
16 Jane Hogge there and I found her daughter. Her  
17 daughter was in the customer file room. Jane was in  
18 her office. Of course, I asked her what she was  
19 doing there and she told me she was making sure  
20 everything was neat for the next week. We would  
21 have a big week and she wanted to make sure  
22 everything got started off on the right foot.

23 Q. When did you find out that Ms. Hogge  
24 was quitting?

25 A. The next day.

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1 Q. How did you find out?

2 A. The employees -- I think Sharon Garland  
3 called telling me.

4 Q. Did you try to reach Jane?

5 A. I didn't have Jane's home number. I  
6 couldn't reach her then. I went to her house early  
7 the next morning and I begged her to come back.

8 Q. Did she come back?

9 A. She came back for a few hours.

10 Q. Did she ever tell you about leaving a  
11 list of things to be invoiced?

12 A. No, no conversation about that.

13 Q. Did she tell you anything about  
14 Mr. Dively leaving any notes about invoicing for the  
15 labor and materials of the pedestals?

16 A. No.

17 Q. Did she tell you anything about Dock of  
18 the Bay or Shark Island?

19 A. No.

20 Q. On March 16th did you meet with your  
21 employees?

22 A. Yes, I did.

23 Q. What did you do?

24 A. I met with them one by one and just  
25 wanted to assure that they would stay with the

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1 company, told them I was going to make sure the  
2 company stayed in business and that we had a very  
3 brief conversation one on one except for the guy who  
4 couldn't speak English and I had to get his brother  
5 in to act as interpreter.

6 Q. Did you have to go back and find Donald  
7 Garland and hire him to run the back?

8 A. I talked to Sharon and told her I  
9 wanted Donald to come on in and he came in to run  
10 the back.

11 Q. When did Mr. Risley arrive?

12 A. He arrived Monday, the 19th.

13 Q. Now, when Mr. Risley got there did you  
14 make any further discoveries about what the company  
15 did or didn't have in the way of tools and so forth?

16 A. Yes. We asked Donald to make a list of  
17 what we needed to run the operation and we found out  
18 that we were just stripped. We couldn't produce a  
19 single pedestal. We didn't have equipment. We  
20 didn't have inventory. We had to spend that week  
21 cleaning up the plant. We couldn't ship a single  
22 product.

23 Q. What was the condition of the company's  
24 records?

25 A. They were miserable. Everything was an

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1 absolute mess.

2 Q. About that time did you receive any  
3 telephone calls about marinas?

4 A. We started receiving calls from irate  
5 customers wanting their product and we started  
6 receiving calls from irate customers who wanted us  
7 to complete an order. As we received these calls we  
8 would go and pull the customer file and what was  
9 distressing was there was -- some of these people  
10 calling we didn't have customer files for.

11 Q. Briefly tell the jury what's in a  
12 customer file.

13 A. Typically when you start negotiating  
14 with a customer you open a file and put any  
15 correspondence, proposals, contracts that would  
16 pertain to that particular customer.

17 Q. Now, in connection with those calls did  
18 you have occasion to speak with people at Meeko  
19 Marine?

20 A. Yes. We were working on a product for  
21 them and they told us we better call Dock of the  
22 Bay.

23 MR. BAYLISS: Your Honor --

24 MR. BUGG: This goes to notice.

25 THE COURT: Sustain the objection.

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1 Let's get on.

2 BY MR. BUGG:

3 Q. When you received information about  
4 Dock of the Bay what did you do first of all to try  
5 to find some record in your own files?

6 A. I looked for a file. We didn't have a  
7 file in the name of Dock of the Bay. We didn't have  
8 a file in the name of Marina Tech. We didn't have a  
9 file in the name of Carl Wolff who is the manager of  
10 the marina. The Dock of the Bay was not in our  
11 Rolodex and Marina Tech was not on our Rolodex.

12 Q. Did you call Mr. Wolff right away or  
13 was that --

14 A. No, I didn't. I was hoping we would  
15 find the files someplace. I waited probably a week  
16 or ten days to call Mr. Wolff. I was focusing with  
17 what was right with the company trying to get it  
18 going, not what was wrong.

19 Q. Did you at some point call Mr. Wolff at  
20 Dock of the Bay?

21 A. Yes. I flew out there, too.

22 Q. What did you learn about Dock of the  
23 Bay as a result of that telephone call?

24 A. I learned that we had --

25 MR. BAYLISS: Your Honor.



M. Ingles - Direct

1 THE COURT: I'm going to let him answer  
2 it.

3 THE WITNESS: I learned that Sea Tech  
4 had --

5 THE COURT: He's not quoting what he  
6 said.

7 THE WITNESS: Sea Tech had quoted the  
8 job in the fall of 1989. Bob had told me it was a  
9 Sea Tech job. He had given me a handwritten piece  
10 of paper saying we were going to get \$56,000 for  
11 that job and he put a question mark by the \$56,000.  
12 In early 1990 I asked Bob how Dock of the Bay was  
13 coming in, in late January or early February. He  
14 said the job was scratched. Due to the economy Dock  
15 of the Bay was not going to be built at all.

16 When I flew out to Dock of the Bay I  
17 found out we had 29 pedestals all with Sea Tech  
18 labels. I found the sample dock box that had been  
19 sent out there had a Sea Tech label on it and I  
20 found out that Marina Tech had been paid for that  
21 order and Marina Tech had been given the deposit on  
22 that job. In looking at our records I found that  
23 Sea Tech had paid for Bob Dively to go out there and  
24 quote the job and Sea Tech paid for him to go out  
25 and get the deposit check. We paid \$466 for the

M. Ingles - Direct

1 plane fare.

2 BY MR. BUGG:

3 Q. When you went to Dock of the Bay and  
4 looked at the pedestals were there any stickers on?

5 A. There were UL, Underwriter's  
6 Laboratories, stickers on them.

7 Q. Did Sea Tech have UL approval on the  
8 pedestal in January and February of 1990?

9 A. No, it didn't.

10 Q. Flip over if you would to Exhibit 38B  
11 which I think is already in evidence, Your Honor,  
12 Defendant's 38B. That's a letter from Mr. Dively to  
13 Dock of the Bay Marina, attention Carl Wolff,  
14 January 16th, 1990. Was that letter in that form in  
15 Sea Tech's records?

16 A. No, it wasn't.

17 Q. Whose letterhead is it on?

18 A. It's on Sea Tech.

19 Q. Direct your attention to the number  
20 down in the lower right-hand corner?

21 A. Yes.

22 Q. That M number, what does that  
23 indicate. The number in the lower right-hand corner  
24 the M number indicates what?

25 A. It was produced in the civil litigation

M. Ingles - Direct

1 in Gloucester County.

2 Q. By which side?

3 A. By that side.

4 Q. Have you ever seen that letter before?

5 A. No.

6 Q. Let me direct your attention to the  
7 typed address what is that, Route 1, Box 43B, Hayes,  
8 Virginia. What is that first of all?

9 A. It's a post office box I found out  
10 about after Bob Dively left Sea Tech.

11 Q. When you say P. O. Box, do you mean  
12 when you go in the post office or it was on a pole  
13 on the road?

14 A. It was on a pole at Sea Tech.

15 Q. Did you know about that box?

16 A. No idea. I may have seen it in passing  
17 but I didn't think Sea Tech was using that box.

18 Q. Was that on any of Sea Tech's  
19 proposals?

20 A. None of Sea Tech's proposals that I'm  
21 aware of.

22 Q. If you would flip to the next page,  
23 38C. Is that a computer generated letter. Compare  
24 that with the letter you just looked at?

25 A. Yes. It's the same letter without the

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1 Sea Technology head.

2 Q. Where did you get 38C?

3 A. This was on our computer. It was on a  
4 disk and an employee discovered that at Sea Tech and  
5 printed that for me.

6 MR. BUGG: I move its admission, Your  
7 Honor.

8 THE COURT: Introduced and marked as  
9 38C.

10 (The document referred to was marked by  
11 the Court as Defendant's Exhibit 38C, and received  
12 into evidence.)

13 BY MR. BUGG:

14 Q. Mr. Ingles, in the course of  
15 investigating the Dock of the Bay matter did you  
16 discover anything about work orders?

17 A. Yes, I did. There were the -- work  
18 orders usually are left at Sea Tech. When we get a  
19 proposal in typically a work order is prepared and  
20 circulated to the workers in the back so they know  
21 what configuration of pedestals to make. I found  
22 out that there were none except for the ones Sharon  
23 Garland had kept and she gave me that. I later  
24 found one buried in a stack that had Jane's name at  
25 the top, too.

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1 Q. Now, on March 23rd did you have  
2 occasion to meet with Frieda Cox?

3 A. Yes. I had lunch with Frieda Cox.

4 Q. And what discussion did you have with  
5 Frieda Cox that day?

6 A. She told me that Bob had done a lot of  
7 things wrong at Sea Tech. She said that he had  
8 acted very strange towards the end of the year. He  
9 would have her do nothing with the dock box.  
10 Although she was sales manager she had not been  
11 allowed to go to the New York Boat Show in January  
12 of 1990 because he didn't want her to know about the  
13 dock box.

14 At Sea Tech we used to go down to the  
15 fall show in Fort Lauderdale and we rented space for  
16 that in late 1989 and paid for some accommodations  
17 and nobody went down there. She said that was  
18 because the dock box wasn't ready yet. She told me  
19 Bob and Al had worked on the dock box at the back of  
20 Sea Tech. She told me Bob kept his door locked at  
21 Sea Tech even if he would just go for a bite to  
22 eat. She said he didn't want me to know about the  
23 Mercedes he bought or buying the two waterfront lots  
24 at King's Mill and told her not to have any  
25 communication with me whatsoever towards the end of



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1 1989.

2 Q. Did you discuss with her ever her going  
3 into Bob's office?

4 A. She said --

5 MR. BAYLISS: I let the hearsay come in  
6 this far. Now he wants to lead him. He didn't say  
7 enough hearsay so I thought the proper question was  
8 what you told Frieda. I now object to it.

9 MR. BUGG: Your Honor, Ms. Cox --

10 THE COURT: Ask the question and let's  
11 get the answer over with.

12 BY MR. BUGG:

13 Q. Did you have any further discussion  
14 with her about going into Mr. Dively's office?

15 A. She was not allowed into Mr. Dively's  
16 office towards the end of 1989. If she went in  
17 there he would cover things on his desk. One time  
18 when she went in there and he pulled a gun on her.  
19 She said --

20 MR. BAYLISS: Your Honor --

21 THE COURT: I sustain that objection.

22 MR. BAYLISS: Would you please instruct  
23 the jury to ignore that, too?

24 THE COURT: Ladies and gentlemen, those  
25 statements please disregard, please. Mr. Bugg, I

M. Ingles - Direct

1 thought one day in this case, one day.

2 MR. BUGG: Judge, Ms. Cox has  
3 testified.

4 THE COURT: I'm not going to permit  
5 that. You had occasion to ask her on  
6 cross-examination the same thing you are trying to  
7 bring through him. You had the occasion to do so  
8 and you didn't do it. Now that she can't come back  
9 to testify because she's been sitting in this  
10 courtroom all the time I'm not going to permit it.

11 MR. BUGG: I think we did ask her about  
12 these things but I'm going to move on.

13 THE COURT: Any witnesses have been  
14 separated. If she's been in the courtroom she's  
15 certainly not qualified to testify again.

16 BY MR. BUGG:

17 Q. Now, toward the end of March did you  
18 get a call from a Mr. Keating?

19 A. Yes, I did.

20 Q. What was the substance of that call?

21 A. That he had seen the box at the Miami  
22 Boat Show.

23 MR. BAYLISS: Already in. I don't know  
24 why we're going over it again.

25 MR. BUGG: Because it shows the

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1 information --

2 MR. BAYLISS: Go ahead. I don't want  
3 Mr. Bugg to testify. Let's have him say the  
4 hearsay.

5 THE WITNESS: Mr. Keating called and  
6 said he had seen the dock box at the Miami Boat Show  
7 in 1990.

8 THE COURT: We've been over all that.  
9 What's the result of the conversation with  
10 Mr. Keating, Ingles? We've been over the dock box  
11 with Keating.

12 BY MR. BUGG:

13 Q. Did he tell you he had seen a flyer?

14 A. He had seen a flyer with Sea Tech,  
15 Highway Post Office, he had sent a check and it was  
16 deposited in Sea Tech and he wanted to know where it  
17 was.

18 Q. You saw the yellow flyer?

19 A. Yes.

20 Q. Did you find that?

21 A. Yes, I did.

22 Q. Now, toward the end of March in  
23 addition to the orders that were the subject of that  
24 memo from Jane Hogge about orders in-house, were  
25 other orders coming in?

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1 A. Oh, yeah, plenty of orders.

2 Q. How many roughly?

3 A. We had over \$400,000.

4 Q. Towards the end of March did you  
5 receive any information from any of your employees  
6 about dock boxes being taken to New Jersey?

7 A. Yes. I received information that Al  
8 Brooks had taken 14 dock boxes to some marina in New  
9 Jersey. None of them knew the name of the marina.

10 Q. Did you talk to Bill Robinson?

11 A. He was a painter at Sea Tech. He told  
12 me they had hidden the boxes on February 10th when  
13 Rick Risley and I were coming for a meeting. They  
14 hid them in the drying section.

15 Q. Raymond Cook?

16 A. He was an employee. He participated in  
17 moving the equipment out and while he was doing so  
18 Bob had come in the back to tell Al what to do.

19 Q. In early April did you have a  
20 conversation with anybody from Shark Island?

21 A. I did. Howard Hoffman called up and he  
22 was irate and he wanted to know where the rest of  
23 his boxes were and I asked him where he was from and  
24 he said Shark Island. We went to pull the file and  
25 we didn't have anything. So I asked him to send us

M. Ingles - Direct

1 what we had and I made arrangements to go up there  
2 and see what was on site.

3 Q. Shortly after that did you have  
4 occasion to talk with Ms. Cox on the phone again?

5 A. Yes, I did.

6 Q. Let me back up. On March 23rd when you  
7 went to Nick's with Frieda Cox and had lunch did you  
8 say you were going to bury Bob Dively?

9 A. No.

10 Q. Did you use the words that she used?

11 A. No.

12 Q. Did you say any of those things that  
13 she said you said?

14 A. No, not at all.

15 Q. Back to April 4th or thereabouts when  
16 you spoke to Ms. Cox on the phone, what did she tell  
17 you, if anything, about any other information about  
18 Mr. Dively?

19 MR. BAYLISS: You already ruled you're  
20 not going to let him ask that question anymore. I  
21 don't know why Mr. Bugg makes me have to stand up  
22 and do this every time.

23 THE COURT: I don't either. I've  
24 already ruled, Mr. Bugg, one time.

25 BY MR. BUGG:



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1           Q.       Did you have occasion to speak with  
2 Mr. Gary Taylor about that time?

3           A.       Yes.

4           Q.       The man who testified here in this  
5 case?

6           A.       Yes.

7           Q.       What was the purpose of your call?

8           A.       It was because we had a bill to Sea  
9 Tech on design work and Gary wanted the bill paid  
10 and I wanted to know what the bill was for and when  
11 it turned out to be for design work for the  
12 electrical layout at Poole's Grant -- Sea Technology  
13 doesn't install pedestals. We just manufacture, so  
14 we don't do the electrical layout for the contractor  
15 who is going to install them and I asked him if he  
16 didn't have the wrong company, shouldn't that have  
17 gone to Marina Tech and he wasn't aware of Marina  
18 Tech.

19          Q.       In late March did you have a  
20 conversation with Jim Eaton about accounts  
21 receivable?

22          A.       Jim came to the office. He was trying  
23 to help us piece things together.

24          Q.       Flip over to Exhibit 25. Is that the  
25 document that Mr. Eaton made you aware of?

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1 A. Yes.

2 Q. Flip over to the third from the last  
3 page and direct your attention to the bottom.

4 A. Uh-huh.

5 Q. It's been circled long-term  
6 receivables. What does it say?

7 A. Don't know when and if they will ever  
8 pay.

9 Q. What's the next to the last item at the  
10 bottom?

11 A. Marina Tech, \$18,924.95.

12 Q. Before you saw that were you ever aware  
13 that Sea Tech had a receivable for Marina Tech for  
14 \$18,924.95?

15 A. No.

16 Q. Let me direct your attention back to  
17 Willoughby Harbor. Look at that right under Marina  
18 Tech it says Willoughby?

19 A. Right.

20 Q. \$17,199.31?

21 A. Right.

22 Q. Willoughby you testified was a marina  
23 that you had an interest in?

24 A. That's right.

25 Q. How much did you own in that marina?

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1           A.       I owned at that time I think about 55  
2 percent.

3           Q.       First of all, were Sea Tech pedestals  
4 put on the docks at Willoughby?

5           A.       Yes.

6           Q.       Who quoted that job?

7           A.       Bob Dively quoted that job.

8           Q.       Look over at 26A, is that the original  
9 quote to Willoughby?

10          A.       Yes, it is.

11          Q.       What's the date?

12          A.       April 30th, 1985.

13          Q.       What are the prices for the pedestals  
14 shown on that?

15          A.       \$475, \$562, \$267, \$257.50, \$306,  
16 \$518.50.

17          Q.       Did you sign that for Sea Technology?

18          A.       Robert C. Dively.

19          Q.       Who signed it for Lower Chesapeake  
20 Associates which is Willoughby Harbor?

21          A.       William Allen.

22          Q.       Flip over to 26B. Is that the invoice  
23 for when the pedestals were actually shipped to  
24 Willoughby?

25          A.       Yes, it is.

M. Ingles - Direct

1 Q. What's the date?

2 A. That's --

3 MR. BAYLISS: We don't have copies of  
4 any of this stuff. They don't have copies for us.  
5 Go ahead.

6 BY MR. BUGG:

7 Q. Those prices are lower than the  
8 original quote. Why is that?

9 A. The second group is because they were  
10 shipped without meters. They are \$200 cheaper each  
11 because that's what we charge for meters, \$100 per  
12 meter, and these were shipped without meters.

13 Q. Was that invoice paid?

14 A. Yes. That was paid in full. We paid  
15 the deposit on the total job quote.

16 Q. Look over at 26D.

17 A. Yes.

18 Q. Is that a bill for more pedestals to  
19 Willoughby Harbor?

20 A. Yes, it is.

21 Q. What's the date?

22 A. February 11, 1986.

23 Q. What's the cost of those?

24 A. Those were \$695 each for eight  
25 pedestals.

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1 MR. BUGG: I move the admission of 26A,  
2 B and D, Your Honor.

3 THE COURT: 26A, B and 26D marked and  
4 introduced as such for the defendant.

5 (The documents referred to were marked  
6 by the Court as Defendant's Exhibits 26A, 26B and  
7 26D, and received into evidence.)

8 BY MR. BUGG:

9 Q. You just testified that your interest  
10 in Willoughby Harbor Marina when this was going on  
11 was 55 percent?

12 A. Yes.

13 Q. And Mr. Dively's interest in Marina  
14 Tech was what?

15 A. Hundred percent.

16 Q. If \$20,000 were offset at Willoughby  
17 Harbor and \$20,000 were offset at Marina Tech using  
18 those percentages what benefit would that be to you?

19 A. \$11,000 to me.

20 Q. What benefit would it be to Mr. Dively?

21 A. \$20,000.

22 Q. Did you ever have any agreement with  
23 Mr. Dively to offset the Willoughby Harbor bill with  
24 the Poole's Grant, Marina Tech bill?

25 A. That was never discussed.



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1 Q. Now, what was the reason for the  
2 Willoughby Harbor receivable that was on that list?

3 A. We paid in full for the pedestals.  
4 What this was for, we had meters and other parts  
5 that were shipped later and we had problems with  
6 those meters and they weren't being addressed and  
7 this stayed on the books for a while after  
8 Mr. Dively left. I sent employees down from Sea  
9 Tech to fix the problem and we paid the bill in  
10 full.

11 Q. Direct your attention back to Poole's  
12 Grant. After you saw that accounts receivable for  
13 \$18,900 what did you do?

14 A. I tried to find out a description on  
15 the real estate. I was hoping money was still owed  
16 by the developer to Marina Tech for these pedestals.

17 Q. Did Bob Dively ever discuss the pricing  
18 of the Poole's Grant, Marina Tech job with you?

19 A. No.

20 Q. Did he even tell you that Marina Tech  
21 was supplying pedestals to Poole's Grant?

22 A. Not Marina Tech, no. It was supposed  
23 to be a Sea Tech job. Back in 1988 we discussed the  
24 fact that the property was going to be developed and  
25 Sea Tech was going to get the order for that.

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1           Q.       There's been some testimony that Marina  
2 Tech wrote some checks for things that came to Sea  
3 Tech. Why was that?

4           A.       We would have COD orders come in from  
5 time to time and the checkbook was up in my office  
6 and apparently towards the end of 1989 he wrote a  
7 couple of Marina Tech checks and we would reimburse  
8 him right away.

9           Q.       Did there come a time in late 1989 or  
10 fall of 1989 when Sea Tech stopped paying salaries  
11 to you and Mr. Dively?

12          A.       Yes. I think October was the last  
13 month that Sea Tech paid salaries.

14          Q.       How did that come about?

15          A.       Mr. Dively said we couldn't afford it  
16 and he wanted to quit paying salaries.

17          Q.       Since that time have you reviewed the  
18 bank statements of the company?

19          A.       Yes.

20          Q.       Do you have them with you?

21          A.       Yes.

22          Q.       What do they show were the monthly  
23 balances for the company October through February?

24          A.       Well, the ending balance in November  
25 and December was around \$30,000. In January it was

M. Ingles - Direct

1 I think in the upper twenties and in February I  
2 believe it was \$12,000 and something.

3 Q. Now, you heard Mr. Dively say that Sea  
4 Tech owed him \$7,500 on a note?

5 A. Uh-huh.

6 Q. Was that ever paid?

7 A. It was paid in full.

8 Q. Now, you started to mention that you  
9 filed this mechanic's lien?

10 A. Yes, I did.

11 Q. And as a result of that did you talk to  
12 the lawyers for the marina and you found out what?

13 A. I found out that -- they sent me all  
14 their information. They wanted to establish for me  
15 that the developer had already paid for the  
16 pedestals because if he has then the lien is no  
17 good. The lien is only good for materials if the  
18 developer hasn't paid the supplier, so they sent me  
19 all their information and I found out that they had  
20 paid and they paid \$39,710.

21 Q. Did you see on there where a deposit  
22 had been apparently paid for 25 percent of  
23 pedestals?

24 A. Yes.

25 Q. Did Sea Tech get it?

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1 A. No. We didn't get a penny on that job.

2 Q. You didn't get anything?

3 A. No, not in Poole's Grant name or Marina  
4 Tech's name.

5 Q. What is the normal policy of Sea Tech  
6 requiring a deposit on pedestals jobs?

7 A. Almost every instance a 25 percent  
8 deposit is required. There's certain instances that  
9 that's not required, but they are few and far  
10 between. It was required at Willoughby and that  
11 marina that I have an interest in paid a full 25  
12 percent deposit.

13 Q. Now, in May, late May, 1990, did you  
14 have another meeting with Ms. Cox?

15 A. Yes. I met her for lunch and she and  
16 Rick Risley and I went to lunch on May 25th, 1990, a  
17 Friday.

18 Q. Did you have any discussion with her  
19 about Mobjack Bay?

20 MR. BAYLISS: Your Honor, again, I'm  
21 embarrassed to have to stand up again, but I have to  
22 stand up, did you have any discussions about Ms. Cox  
23 about whatever he wants to lead him and testify for  
24 her. I object to it. It's hearsay, fourth time.

25 MR. BUGG: She was asked about that

M. Ingles - Direct

1 conversation and specifically about Mobjack Bay.

2 THE COURT: You are testifying now,  
3 Mr. Bugg. I'm not going to permit it. Let's get  
4 on.

5 MR. BUGG: May I ask him the substance  
6 of the conversation?

7 THE COURT: Go ahead.

8 BY MR. BUGG:

9 Q. What did you learn as a result of that  
10 conversation?

11 A. I learned I should go to Mobjack Bay  
12 Marina and I went there the very next day, a  
13 Saturday, and I met with the owner, Mike Talbott.

14 Q. What did you learn as a result of  
15 that?

16 MR. BAYLISS: There's a gentleman that  
17 came in here that Your Honor wouldn't let testify  
18 and now he wants to say what that gentleman said.

19 MR. BUGG: Let's move on.

20 THE COURT: The objection has been  
21 sustained.

22 MR. BAYLISS: I would ask -- never  
23 mind.

24 BY MR. BUGG:

25 Q. Let's talk about Dock of the Bay. Did



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1 the company pay any expenses in connection with that  
2 job as you were able to find as you were  
3 investigating this matter?

4 A. Dock of the Bay, we paid for the plane  
5 fare for Bob to go out there and get the deposit on  
6 the job and we paid to ship the sample unit out  
7 there.

8 Q. Now, you mentioned Lake Monroe Harbor  
9 in Florida which was the picture you showed the  
10 ladies and gentlemen of the jury. Do you have a  
11 customer file on Lake Monroe Harbor?

12 A. Yes, we do.

13 Q. Is this it?

14 A. Yes, it is.

15 Q. Does it have work orders in it?

16 A. Work orders, proposals, the contract,  
17 everything pertaining to the job.

18 Q. Does it have work orders for dock  
19 boxes?

20 A. Oh, yes.

21 MR. BAYLISS: Do you want to let us see  
22 that?

23 MR. BUGG: Help yourself.

24 BY MR. BUGG:

25 Q. Flip over to Defendant's Exhibit Number

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1 61. Do you have that in front of you?

2 A. Yes, I do.

3 Q. What year was Lake Monroe Harbor?

4 A. Lake Monroe Harbor I think was in 1988.

5 Q. I direct your attention back to Exhibit  
6 Number 61 which has been identified as Mr. Dively's  
7 handwritten note that Ms. Hogge made some changes on  
8 it. It totals \$11,511.75. When did you see that  
9 document?

10 A. I first saw it I think it was around  
11 early April after he left.

12 Q. Do you know where it was found?

13 A. I'm not sure. It was found someplace  
14 at Sea Tech.

15 Q. Is this the original of that document,  
16 Mr. Ingles? I want you to take a look at that?

17 A. Yes. That's the original. I gave that  
18 to Alvin Anderson.

19 Q. And look at the copy of it before you  
20 there and I direct your attention to the notation  
21 for Shark Island down at the bottom. Would you  
22 please compare that with the list of the parts for  
23 Dock of the Bay just above? That's the parts under  
24 Shark Island and parts under Dock of the Bay?

25 A. The Dock of the Bay order has some

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1 bulbs and ballast and sockets, face plates and there  
2 weren't any on Shark Island although Shark Island  
3 had two sides with lights on it instead of one so it  
4 should have had double.

5 Q. What's the total shown on that document  
6 that Mr. Dively is saying should be invoiced to him  
7 for Shark Island?

8 A. The total \$1,132.80.

9 Q. Let me show you what's been marked  
10 Defendant's Exhibit 60. When did you first see  
11 that?

12 A. The same time I think that I saw this  
13 61.

14 Q. And did you also give that to Alvin  
15 Anderson?

16 A. Yes, I did.

17 THE COURT: Mr. Bugg, it might be nice  
18 to let the jury know what you and Mr. Ingles were  
19 talking about.

20 MR. BUGG: It's the other page of  
21 Mr. Dively's notes.

22 A JUROR: That's the one we saw  
23 yesterday.

24 BY MR. BUGG:

25 Q. Mr. Ingles, let me hand you what's been

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1 marked as Defendant's Exhibit 61A which is not yet  
2 in evidence, Your Honor, and ask you if you can  
3 identify that?

4 A. Yes, I can.

5 Q. What is it?

6 A. This is a list several pages long that  
7 was left at Sea Tech -- was discovered at Sea  
8 Technology after Jane Hogge and Bob Dively left.

9 Q. Do you know where that was found?

10 A. I think Rick Risley found it.

11 Q. Is that the original of that document?

12 A. Yes, it is.

13 Q. Mr. Ingles, would you look at those  
14 three documents and tell me if you see any staple  
15 holes?

16 A. No. There's no single hole in these  
17 papers, nothing.

18 MR. BUGG: I would like to have the  
19 jury look at these, Your Honor.

20 BY MR. BUGG:

21 Q. Did any dispute -- did you have any  
22 dispute with the people at Dock of the Bay about the  
23 UL stickers?

24 A. I wrote them just advising them that  
25 Sea Tech wasn't going to stand behind them because



M. Ingles - Direct

1 Sea Tech hadn't gotten paid for the job.

2 Q. In Sea Tech's records was there a  
3 letter from Mr. Dively concerning the UL stickers to  
4 Dock of the Bay?

5 A. Yes, not Sea Tech but that Sea Tech  
6 would stand behind the electrical safety of the  
7 units that were shipped.

8 Q. Let me show you what's I've marked as  
9 Defendant's Exhibit 61C and ask you if that is a  
10 copy of the previous document that you just saw but  
11 it has a different totaling on it?

12 A. Yes.

13 Q. It has that same M number on it?

14 A. Yes, it does.

15 Q. Indicating?

16 A. Indicating that they produced that in  
17 the Gloucester litigation.

18 Q. Did you ever find any copy of the  
19 original of this document which is Number 61 at Sea  
20 Tech at all?

21 A. No. I just found that original Sea  
22 Tech. This was produced in the Gloucester  
23 litigation. That wasn't left at Sea Technology,  
24 only that one the original I gave to Alvin Anderson.

25 MR. BUGG: Move to introduce that.



M. Ingles - Direct

1 THE COURT: Introduced and marked as  
2 Defendant's Exhibit 61C.

3 (The document referred to was marked by  
4 the Court as Defendant's Exhibit 61C, and received  
5 into evidence.)

6 BY MR. BUGG:

7 Q. Mr. Ingles, why didn't Sea Technology  
8 bill Marina Tech for Poole's Grant, Dock of the Bay?

9 MR. BAYLISS: One second, Your Honor.  
10 We aren't getting any of those documents.

11 BY MR. BUGG:

12 Q. Why didn't Sea Technology invoice  
13 Marina Tech for Dock of the Bay and Shark Island?

14 A. Because Mr. Dively knew what he owed to  
15 the company and hadn't been paid and because the  
16 memo he left behind doesn't touch what those jobs  
17 were worth. Those jobs were about \$100,000 and this  
18 memo was to bill \$11,511.75.

19 MR. BAYLISS: You already tried this  
20 case once and you lost it, but let's take it up  
21 now.

22 (A conference was held at the bench.)

23 THE COURT: Ladies and gentlemen, take  
24 a walk.

25 (The jury withdrew from the courtroom.)

M. Ingles - Direct

1 MR. BUGG: Your Honor --

2 THE COURT: I want to make one  
3 comment. Years of experience tells me that this  
4 jury is getting terribly, terribly irritated at  
5 somebody. I don't know who but they are getting  
6 terribly irritated at somebody, sitting up there the  
7 way they act tells me. I may be wrong but it tells  
8 me that they are not exactly -- we've been here four  
9 days and it looks like we'll be here another and  
10 they are not very happy some of them. I just want  
11 to make that observation. That's all it is, simply  
12 an observation, and I don't know who or what makes  
13 them unhappy but they're not very happy. Go ahead.

14 MR. BUGG: Your Honor, Mr. Dively put  
15 into the evidence a list of the things he says Sea  
16 Tech owes him. This is a list of the things that  
17 Mr. Ingles claims that Dively owes the company.  
18 Mr. Bayliss says you tried that case and lost it.  
19 Mr. Dively tried that case and lost, too, because  
20 the Court didn't say he could have anything.

21 THE COURT: Didn't ask for anything.

22 MR. BUGG: He asked for an accounting.  
23 We are entitled to put it in.

24 MR. BAYLISS: Judge, the only reason I  
25 asked Mr. Dively that question, Mr. Bugg handed him

M. Ingles - Direct

1 an exhibit from the civil trial that says you  
2 acknowledge Marina Tech owes and that was on  
3 cross-examination. To clear it up on redirect I  
4 showed him an invoice that he objected to that said  
5 this is what Marina -- Sea Tech owes Marina Tech and  
6 it was offset. Now he wants to retry the case that  
7 was tried before and it's not relevant.

8 MR. BUGG: I don't want to retry it.

9 THE COURT: Here's what I'm going to  
10 do. I'll let you put it in with the statement that  
11 that's what it is and nothing more and let it go.

12 MR. BUGG: That's all I want to do.

13 THE COURT: He has a right to make some  
14 claim in this case, Mr. Bayliss.

15 MR. BAYLISS: I don't think Mr. Dively  
16 is on trial in this case. He wants to try  
17 Mr. Dively again.

18 THE COURT: Certainly we are. No  
19 question about that. Heavens to Betsy.

20 MR. BAYLISS: What it is, this is Sea  
21 Technology's schedule of losses document.

22 THE COURT: Oh.

23 MR. BAYLISS: It's not what he owes.

24 THE COURT: If you want Mr. Ingles to  
25 quote what he thinks Marina Tech owes him I'll let

M. Ingles - Direct

1 him do it.

2 MR. BUGG: This is what we said  
3 Dively --

4 THE COURT: I'll let Mr. Ingles say  
5 Marina Tech owes him X number of dollars. It owes  
6 him, and that's all I'm going to do. Bring them  
7 in.

8 (The jury was returned to the  
9 courtroom.)

10 BY MR. BUGG:

11 Q. Mr. Ingles at my request did you add up  
12 what Sea Technology believes Mr. Dively's company  
13 owes Sea Technology?

14 A. Yes.

15 Q. What is it?

16 A. \$228,844.

17 Q. How did you find out about Pelican  
18 Harbor?

19 A. Telephone call from the developer,  
20 Mr. Sietzman in June.

21 Q. Mr. Ingles, Mr. Bayliss has asked you  
22 about your financial statement. What's your  
23 financial condition now?

24 MR. BAYLISS: The financial statements  
25 are in the record. They speak for themselves his

M. Ingles - Direct

1 net worth is \$5 million and his income is over  
2 \$500,000 a year.

3 MR. BUGG: He is entitled to tell them  
4 what it is now.

5 THE COURT: Tell them what it is now.

6 THE WITNESS: I've got almost no cash.  
7 All I've got is real estate holdings and holdings in  
8 small companies. This has drained me of all cash.  
9 I've got about \$50,000 in an IRA that they've  
10 questioned. It was set up by Mr. Wolff improperly  
11 so that will cost me about \$20,000 in penalties.

12 BY MR. BUGG:

13 Q. Let me direct your attention to travel  
14 expenses briefly. Could you explain to the jury  
15 whether Mr. Dively incurred travel expenses at Sea  
16 Technology and whether it involved his family?

17 A. Oh, sure. He took his wife and  
18 daughter to Germany and Italy and England in 1987.  
19 He took his daughter and my wife and I went on that  
20 trip, too. She came back. He took his daughter and  
21 wife to Spain the very next year. Neither my wife  
22 nor I went there. He went a week ahead on the boat  
23 show in Barcelona, spent a lot of money. He took  
24 his wife, his daughter, his son and other daughter  
25 and I think a friend, too, down to the islands back



M. Ingles - Direct

1 in '88 without my knowledge. His travel expenses in  
2 19 -- I think it was '88 were \$47,000.

3 Q. Now, let me direct your attention to  
4 your contact with the Sheriff's Department and with  
5 Mr. Shaw. Would you explain to the jury the  
6 chronology of how you contacted the Sheriff's  
7 Department and Mr. Shaw?

8 A. After I got Mr. Keating's phone call in  
9 late March and I had numerous conversations with  
10 employees and had learned about the equipment and  
11 some other things I saw the sheriff on the street  
12 one day over in Gloucester and I said that --

13 MR. BAYLISS: Your Honor, I have -- he  
14 can say what he told the sheriff, not what the  
15 sheriff told him.

16 THE COURT: He said he saw the sheriff  
17 on the street and he said to the sheriff.

18 BY MR. BUGG:

19 Q. What did you tell the sheriff?

20 A. I told the sheriff that I was  
21 suspicious that some things had gone on down at Sea  
22 Technology and I asked if he had an investigator  
23 that might be available in the future that could  
24 find out more. I was going to do some more  
25 investigation. I told him at that time -- I think I

M. Ingles - Direct

1 knew the name Shark Island and I knew the name Dock  
2 of the Bay, and I was going to go out to those  
3 places and see what was there.

4 Q. Did you go?

5 A. Yes. I went out there in early April.  
6 I think the date was actually April 8th. I went on  
7 a Sunday and I went to -- flew in Philadelphia and  
8 went to New Jersey and went to Shark Island and came  
9 back and flew out to Cleveland and went out to  
10 Sandusky, Ohio, went out there Sunday on the 9th and  
11 on that Monday I returned.

12 Upon my return Alvin Anderson and I  
13 talked on April 9th. Alvin talked to the U.S.  
14 Attorney and Alvin suggested that I contact the  
15 authorities in Gloucester. At that point I believe  
16 I called Bill Shaw's office and Bill was very busy I  
17 think with that Fisher murder case where the fellow  
18 apparently killed his wife and dumped her off the  
19 pier and he didn't get back with me. I bumped into  
20 the sheriff again or telephoned him. I really don't  
21 recall, and I said I thought it was about time the  
22 investigator and I got together. The only  
23 investigator I knew in his office was a fellow named  
24 Michael Nicely, Lieutenant Nicely. So the sheriff  
25 said he would get him to contact me and Mr. Nicely

M. Ingles - Direct

1 contacted me and told me he was going to refer me to  
2 Mr. Adams, that Mr. Madison was too busy to handle  
3 the case.

4 Q. There's been a lot of testimony about  
5 this April 11th hearing in this court. Was this  
6 before or after?

7 A. By the April 11th hearing I had three  
8 conversations with the sheriff's office, two with  
9 the sheriff and one with Mr. Nicely.

10 Q. When did you first meet with Mr. Adams,  
11 Detective Adams?

12 A. Mr. Adams called me on April 12th. I  
13 think he called from Sea Tech and wanted to meet at  
14 Sea Tech.

15 Q. And did you met with him?

16 A. That afternoon.

17 Q. Would you share -- did you join him or  
18 just let him have the run of the place?

19 A. I told him what I knew at that point  
20 and told him he had the run of the place and  
21 suggested he might want to talk to the employees,  
22 Robinson, Cook and the two Garlands.

23 Q. When did you first contact Mr. Shaw or  
24 when did you first talk to him?

25 A. I think that Mr. Shaw contacted me

M. Ingles - Direct

1 after he talked to Mr. Adams sometime later in  
2 April.

3 Q. Did you give him a package of material  
4 about this case?

5 A. Yes.

6 Q. You heard him testify about that memo?

7 A. Yes.

8 Q. Was that in the package?

9 A. Yes, it was.

10 Q. When did you give him that package?

11 A. I think it was April 26th. I've seen a  
12 transcript. The conversation was taped and I have  
13 seen a transcript.

14 Q. Did you tell Mr. Shaw about the stock  
15 option?

16 A. I not only told him about it, I gave  
17 him a copy of it.

18 Q. Did you tell him about your intent to  
19 treat Mr. Dively as a 50/50 owner?

20 A. Sure.

21 Q. Did you tell Mr. Shaw about the  
22 Willoughby Harbor, Poole's Grant matter?

23 A. I told him --

24 Q. And when?

25 A. I told him at that point that I knew

M. Ingles - Direct

1 about Poole's Grant sure, but Willoughby Harbor had  
2 nothing to do with Poole's Grant so we wouldn't have  
3 talked about that except in the past and he knew  
4 Mr. Freeman and I owned it.

5 Q. When did you find out Mr. Dively was  
6 claiming some kind of offset?

7 A. It was way after the civil case in  
8 Gloucester. I think it was in December of 1990 that  
9 he claimed an offset.

10 Q. When you found out did you talk to  
11 Mr. Shaw about them?

12 A. Oh, sure.

13 Q. Mr. Ingles, when you discovered what  
14 had happened at Sea Tech were you mad?

15 A. I was mad and hurt, yeah.

16 Q. Why?

17 A. I had done a lot for Mr. Dively. I had  
18 done an awful lot for him.

19 Q. Did you cooperate with Mr. Shaw?

20 A. Sure.

21 Q. Did you want to see convictions in  
22 these cases?

23 A. Yes, I did.

24 Q. Did you believe that Mr. Dively was  
25 guilty of the charges?



M. Ingles - Direct

1 A. Sure.

2 MR. BAYLISS: His belief is not  
3 relevant. Facts are relevant. It's all  
4 subjective. It's not relevant.

5 THE COURT: What he did is relevant,  
6 Mr. Bugg. I'm not going to permit him to answer  
7 that. He can tell what he did.

8 MR. BUGG: There's a case on that but  
9 I'll move on.

10 BY MR. BUGG:

11 Q. When did you next talk to Gary Taylor?

12 A. I visited Gary Taylor some time I  
13 believe it was July of 1990.

14 Q. What was the purpose of the call?

15 A. My family was on vacation down there in  
16 North Carolina, South Carolina area, so I drove on  
17 down to see if there was any marina work, and I had  
18 been in the Charleston area looking at the  
19 devastation that Hugo had left behind on marinas and  
20 tried to get work, so I called him to see if I could  
21 have a chat with him.

22 Q. Did Mr. Taylor make any statements to  
23 you about whether there was any marina work  
24 available?

25 A. When I walked in his office the first

M. Ingles - Direct

1 question I asked Mr. Taylor was if there was any  
2 marina work available in the area and he said no.  
3 At that point I became very guarded in what I said  
4 to Mr. Taylor.

5 Q. Why?

6 A. All you had to do was drive a few miles  
7 and you could see marina after marina that had been  
8 devastated so you knew there was marina work.

9 Q. What did you know about Mr. Gary Taylor  
10 and his relationship --

11 A. I knew they were good friends and he or  
12 a member of his family was a shareholder in one of  
13 Bob Dively's corporations.

14 Q. Mr. Ingles, did you make to Gary Taylor  
15 the statement Gary Taylor said you made about Bob  
16 Dively?

17 A. Certainly not. Mr. Taylor told me he  
18 hadn't even talked to Bob Dively since Bob had left  
19 Sea Tech and that made me very suspicious.

20 Q. Now, you heard some testimony about  
21 Fred Pesch?

22 A. Yeah.

23 Q. What was the reason for Fred Pesch's  
24 involvement with Sea Tech?

25 A. He became a licensee to manufacture and

M. Ingles - Direct

1 market our Docksider pedestals in a certain area in  
2 the country.

3 Q. Do you have the agreement that  
4 Mr. Pesch signed?

5 A. Yes, I do. I've got it in my  
6 briefcase.

7 Q. What's the date of it?

8 A. It's June of 1987.

9 Q. What conversation did you have with  
10 Mr. Pesch about venue?

11 A. None. I didn't have any with him. It  
12 was in the agreement. I had no conversations. It  
13 was just part of the agreement.

14 Q. He mentioned a real estate transaction  
15 in which a gentleman who was, quote, going to be the  
16 new judge was involved?

17 A. That's right.

18 Q. When did that transaction take place?

19 A. We didn't start talking about that with  
20 John Folks who is now Judge Folks until March of  
21 1988.

22 Q. How long after this meeting with  
23 Mr. Pesch?

24 A. Eight months or something, nine months.

25 Q. Mr. Ingles, did you tell some people

M. Ingles - Direct

1 that Mr. Dively was a crook or thief or had stolen  
2 from Sea Tech?

3 A. I wouldn't be surprised if I used that  
4 terminology with some people.

5 Q. Why did you say that?

6 A. Because in my opinion he has stolen  
7 from Sea Tech.

8 Q. Mr. Ingles --

9 THE COURT: Gentlemen, why haven't all  
10 these items been exchanged before we went to court?

11 MR. BAYLISS: I addressed that with you  
12 earlier, Judge.

13 BY MR. BUGG:

14 Q. Turn to 24B, Mr. Ingles. The first  
15 page should be a copy of the Poole's Grant invoice.

16 A. All right.

17 Q. Would you flip after that and just tell  
18 me if those invoices represent proposals that were  
19 accepted and produced and taken from the records of  
20 Sea Technology?

21 A. Yes, these were all taken from the  
22 records of Sea Tech.

23 Q. Did you gather those for me?

24 A. Yes.

25 Q. And are they the records of the

M. Ingles - Direct

1 company?

2 A. Yes.

3 MR. BUGG: I move their admission as  
4 24B.

5 THE COURT: 24B --

6 MR. BAYLISS: I don't think they're  
7 relevant. They're just a bunch of invoices.

8 THE COURT: Whatever they are worth,  
9 introduced and marked as Defendant's Exhibit 24B.

10 (The document referred to was marked by  
11 the Court as Defendant's Exhibit 24B, and received  
12 into evidence.)

13 BY MR. BUGG:

14 Q. Mr. Ingles, were you subpoenaed to  
15 appear before the Grand Jury on May 7th?

16 A. Yes.

17 Q. Were you subpoenaed to appear before  
18 the Grand Jury on July 25th?

19 A. Yes.

20 MR. BUGG: That's all I have.

21 THE COURT: By whom?

22 THE WITNESS: By the Commonwealth  
23 Attorney.



1 CROSS-EXAMINATION

2 BY MR. BAYLISS:

3 Q. Mr. Ingles, you are an attorney?

4 A. Yes.

5 Q. Are you familiar with the Canon's on  
6 Ethics?

7 A. Yes.

8 Q. Are you familiar with Rules of  
9 Procedure?

10 A. As familiar as I can.

11 Q. You practice both criminal and civil  
12 law?

13 A. It's been a long time since I practiced  
14 criminal law.

15 Q. And you are familiar with conflicts of  
16 interest and --

17 A. Without full disclosure.

18 Q. It's okay to have a conflict and  
19 disclose it --

20 A. Certainly. You have conflicts  
21 constantly. As long as you disclose the conflicts  
22 that's fine.

23 Q. And the conflict is where you are  
24 wearing two, three, four hats, where you are  
25 representing the client, where you are representing

M. Ingles - Cross

1 the company, where you are representing partners in  
2 the partnership?

3 A. Sure.

4 Q. Willoughby Harbor when they represented  
5 Sea Tech you were partner in Willoughby?

6 A. Yes.

7 Q. So you had a vested economic interest  
8 in Willoughby Harbor?

9 A. It's depends on the transaction but I  
10 did, yes.

11 Q. And you also are an owner of Sea Tech?

12 A. Yes.

13 Q. And you had an individual interest in  
14 that?

15 A. Yes.

16 Q. And Bob Dively had an interest in that?

17 A. Yes.

18 Q. And you represented Bob Dively in  
19 various matters?

20 A. No.

21 Q. And you represented Sea Tech as a  
22 lawyer?

23 A. In some transactions.

24 Q. Now, Mr. Bugg asked you about your  
25 financial condition today. Turn if you would to

M. Ingles - Cross

1 Exhibit 7. Mr. Bugg asked you about your financial  
2 condition and you told us you were destitute?

3 THE COURT: No, Mr. Bayliss.

4 BY MR. BAYLISS:

5 Q. You told us that you have little or no  
6 cash?

7 A. That's correct.

8 Q. You filed this financial statement with  
9 a lending institution that you borrow money from?

10 A. That's correct.

11 Q. And you realize you do so under the  
12 penalty of perjury?

13 A. Yes.

14 Q. And there are Federal laws that deal  
15 with that?

16 A. There certainly are.

17 Q. Let's go back for the last four years  
18 because we have your last four years financial  
19 statements and I'm going to start at the beginning  
20 because you have little or no cash. In the first  
21 one we have four years ago you had an income  
22 projected of \$395,000?

23 A. Which year? I think you have five  
24 years.

25 THE COURT: Find what year.

M. Ingles - Cross

1 BY MR. BAYLISS:

2 Q. The first tab, January 28, 1988, and it  
3 says projected income \$395,000?

4 A. Yes.

5 Q. Then the next one says January 3, 1989,  
6 right?

7 A. Yes.

8 Q. And it says projected income \$399,000,  
9 right?

10 A. Yes.

11 Q. Both those times you are making a  
12 couple of hundred thousand dollars from Sea Tech  
13 during that period of time, 150, 200, somewhere in  
14 that neighborhood?

15 A. I don't know. If you say so.

16 Q. Next one, January 3, 1990, \$796,000.  
17 We have jumped \$400,000?

18 A. Uh-huh.

19 Q. So 1990 your projected income was  
20 almost \$800,000 right?

21 A. No. That was the estimated for 1989.

22 Q. Let's go on then.

23 A. It says that.

24 Q. You filed this with a Federal  
25 institution and it's dated January 3, 1990?

M. Ingles - Cross

1           A.       But it says clearly on the last page it  
2 says in bold letters estimated annual income for  
3 1989.

4           Q.       By that time it wasn't estimated so you  
5 really knew that?

6           A.       You don't know the profits in some of  
7 your investments from the prior year. You haven't  
8 gotten statements.

9           Q.       But you got a pretty good idea or you  
10 wouldn't have put it down there?

11          A.       I hope it's close to accurate.

12          Q.       At the end of '89 beginning of '90 you  
13 thought you made \$800,000 for that year?

14          A.       That's right.

15          Q.       And then the next year, January 10,  
16 1991?

17          A.       Uh-huh.

18          Q.       Estimated annual income for 1991 this  
19 one says?

20          A.       That's right.

21          Q.       And that's just last year?

22          A.       Yes.

23          Q.       And that was filed January 10, 1991 and  
24 that one says \$575,000?

25          A.       That's right.



M. Ingles - Cross

1 Q. And then you have one that says January  
2 6, 1992?

3 A. Right.

4 Q. That's your most current financial  
5 statement?

6 A. That's right.

7 Q. And that says estimated income for  
8 1992, that's this year?

9 A. Yes, it is.

10 Q. And it says \$505,000?

11 A. Yes, it does.

12 Q. And you don't have any cash, this just  
13 sapped you to the bitter bone, right?

14 A. I just said that and it's true.

15 Q. And you filed all these financial  
16 statements with Federally insured institutions, told  
17 them about the money you made over the last four or  
18 five years, several million dollars if you add it up  
19 in income?

20 A. That's before taxes.

21 Q. And net worth of at one time seven or  
22 eight million dollars and now close to six million  
23 dollars?

24 A. It's going down, uh-huh.

25 Q. Since we went over a lot of this in the

M. Ingles - Cross

1 beginning I'm going to try to hit some highlights.  
2 While we're on this you mentioned that you and Bob  
3 had a discussion during 1989 that Bob suggested  
4 let's don't pay any more salaries to me or you,  
5 right?

6 A. Yes, he did.

7 Q. And during all that time you are making  
8 all that money from Sea Tech the only thing you were  
9 doing for Sea Tech was going to boat shows, right?

10 A. I was doing very little for Sea Tech  
11 back then because Bob would hardly communicate with  
12 me.

13 Q. But the only thing you are doing when  
14 you are taking out \$150,000, \$200,000 was flitting  
15 around boat shows?

16 A. Not 1989. In 1989 I took out around I  
17 think it was \$70,000 to \$80,000.

18 Q. '88, \$200,000, '87, \$200,000 and to  
19 earn that \$200,000 you were going to boat shows,  
20 right?

21 A. I earned it by investing in the  
22 company. I finally found a good investment after  
23 many bad ones.

24 Q. Right, and let's talk about your  
25 investment in the company, 1987, 1988, 1989 you had

M. Ingles - Cross

1 a big goose egg in the company, right, zero dollars  
2 in the company?

3 A. I think I had \$1500 in dealing in the  
4 stock.

5 Q. That was a pretty good investment,  
6 \$1500 and taking out a couple of hundred thousand  
7 dollars a year because he had a good idea, a  
8 patentable item?

9 A. It's because I finally found a good  
10 investment. It should have been the best one I ever  
11 made.

12 Q. Finally found a good investment, Bob  
13 Dively?

14 A. No, Sea Technology.

15 Q. And you profited greatly from it?

16 A. Yes.

17 Q. Charles Industries, zero investment,  
18 right, zero dollars, correct?

19 A. I've never made Charles anything.

20 Q. But you had gotten over \$100,000 back?

21 A. That's correct. That was a good  
22 investment, too. I had some terrible ones, too.

23 Q. And that's why you are mad when Bob  
24 quit, right, the goose that laid your golden egg had  
25 gone home?

M. Ingles - Cross

1           A.       The document says that.

2           Q.       So it's your testimony you didn't  
3 report an embezzlement?

4           A.       I reported the facts that I knew at  
5 that time.

6           Q.       And it's your testimony you didn't  
7 report an embezzlement because you had Bob Dively's  
8 notes which showed a clear intent to account for  
9 unpaid monies?

10          A.       No.

11          Q.       Well, you had his notes?

12          A.       I had my notes?

13          Q.       Bob Dively's notes, those exhibits you  
14 have been passing around.

15          A.       Sure.

16          Q.       You had them in your hands when you  
17 went to see Officer Adams and when you went to see  
18 Bill Shaw?

19          A.       I had them in early April and I made  
20 them available to them, that's right.

21          Q.       And they evidenced in your mind an  
22 intent, but he wasn't trying to embezzle any money  
23 from you?

24          A.       In my mind they evidenced an intent to  
25 deceive afterwards.

M. Ingles - Cross

1 Q. Leaving this road map to drive down  
2 that he left for you, that was your thought that he  
3 intended to deceive you?

4 A. In my mind that was a far thing from a  
5 road map, Mr. Bayliss.

6 Q. It said Shark Island, didn't it?

7 A. It did have Shark Island on it.

8 Q. It said 29 pedestals, Dock of the Bay,  
9 didn't it?

10 A. No. You show me Dock of the Bay on  
11 that one.

12 Q. Are you telling me you don't know that  
13 there were 29 pedestals that were shipped at Dock of  
14 the Bay?

15 A. When I first saw that document I didn't  
16 know what 29 pedestals meant.

17 Q. But before the indictments you had gone  
18 to Mr. Shaw, you had gone to Shark Island, you had  
19 gone to Dock of the Bay and you knew that 29 matched  
20 up?

21 A. Yes, I did.

22 Q. You knew that?

23 A. Yes, sir.

24 Q. So you knew that he left you a road  
25 map, this guy who wanted to embezzle said, come get



M. Ingles - Cross

1 me, turn to page whatever and just follow me down  
2 the primrose lane and you can find where I embezzled  
3 all that money from. That's what you had in your  
4 mind when you went to him, right?

5 A. No.

6 Q. Turn if you would because you said  
7 something earlier about being set up by Mr. Wolff,  
8 remember that? You said that in your direct  
9 examination?

10 A. I don't remember that but I've been up  
11 since 3:00 in the morning.

12 Q. Turn to Exhibit 11.

13 A. You are talking about Bob Wolff, not  
14 Carl Wolff. I thought we were on Dock of the Bay  
15 and talking about Carl Wolff.

16 Q. We are talking about Bob Wolff and you  
17 recall the words you use, being set up by Bob Wolff?

18 A. Yes.

19 Q. And as a result of it, Bob Wolff  
20 setting you up, you are now being audited, right?

21 A. I think because your office has made an  
22 inquiry regarding Mac Ingles I'm being audited.

23 Q. And you are being audited because of  
24 things you put on your tax returns, right?

25 A. Because of whatever you-all contacted

M. Ingles - Cross

1 the IRS about.

2 Q. Turn if you would to -- let's flip  
3 over. Mr. Wolff has already testified in the  
4 Federal Express records and the October 7 letter  
5 about how this was originally a Sea Tech benefit  
6 plan and changed to a Mac Ingles benefit plan, and  
7 turn if you would to Form 5300. You recall getting  
8 this with some dates blank, right?

9 A. No.

10 Q. You don't recall getting this with  
11 dates blank?

12 A. No.

13 Q. Give me his testimony from -- is it  
14 your testimony every blank on this form was filled  
15 in, Mr. Ingles?

16 A. I don't know if it was filled in or  
17 not.

18 Q. You don't recall filling in where it  
19 says note and it's flagged right there, you don't  
20 recall filling in that blank?

21 A. No. It's typed and I couldn't line  
22 anything up on a typewriter if I tried, and my  
23 secretary has testified in your deposition of her  
24 that she didn't do that so we don't know who filled  
25 it in.

M. Ingles - Cross

1 MR. BAYLISS: Mr. Ingles -- may I ask,  
2 Judge, Mr. Ingles is a lawyer and he knows the rules  
3 of evidence.

4 THE COURT: Yes, he does, and that  
5 statement --

6 BY MR. BAYLISS:

7 Q. You recall this being undated, don't  
8 you?

9 A. No.

10 Q. You don't?

11 A. No.

12 Q. That's your signature at the bottom,  
13 isn't it?

14 A. Yes.

15 Q. You didn't get this form until October  
16 of 1988, did you?

17 A. No.

18 Q. And it says in that undated note that  
19 the plan was signed on December 30th, 1987?

20 A. That's what it says.

21 Q. And it's signed by you, sworn to under  
22 penalty of perjury?

23 A. Yes. This is a false statement. It is  
24 a false statement and it was done on Mr. Wolff's  
25 advice.

M. Ingles - Cross

1 Q. Mr. Wolff filled it in?

2 A. I don't know who did it.

3 Q. You just said Mr. Wolff did this.

4 THE COURT: He said he did it on  
5 Mr. Wolff's advice.

6 BY MR. BAYLISS:

7 Q. You go to the last paper and it says  
8 the date first above written was December 31, 1987?

9 A. Yes.

10 Q. And you did that under the penalty of  
11 perjury?

12 A. I did that on the advice of Mr. Wolff.

13 Q. So you committed perjury on the advice  
14 of Mr. Wolff?

15 A. No. In order to commit perjury you  
16 have to knowingly say so. Mr. Wolff said this is a  
17 proper document. It cost me \$2200 to prepare it and  
18 it's now going to cost me \$20,000 to correct what  
19 Mr. Wolff willingly took \$2200 to botch up.

20 Q. Now, you said in direct examination  
21 that the exhibit was never introduced but you said  
22 in direct examination that Bob Dively and Marina  
23 Tech owes Sea Technology \$228,844, right?

24 A. Yes, I did.

25 Q. And you said that to Judge Foster three

M. Ingles - Cross

1 months ago, didn't you?

2 MR. BUGG: I object to this. May we  
3 approach the bench about this?

4 (A conference was held at the bench.)

5 THE COURT: I'm going to let him do  
6 it. Note your exception.

7 BY MR. BAYLISS:

8 Q. You went for four days before Judge  
9 Foster in March of this year and tried the civil  
10 case, right?

11 A. I wish it had only been four. I think  
12 it was five.

13 Q. And you tried the civil case and you  
14 took the position and testified that Mr. Dively owed  
15 \$228,844, right?

16 A. Yes.

17 Q. And you lost, right?

18 A. He lost and I lost. We both lost.

19 Q. Sir --

20 A. I lost at that point. I definitely  
21 lost in that point.

22 Q. And there's an order that's been  
23 entered that says he doesn't owe you \$228,844?

24 A. I lost. Judge Foster entered the  
25 order. Yes. That's true.



1 THE WITNESS: I'm familiar with that,  
2 sure.

3 BY MR. BAYLISS:

4 Q. Did you ever have any conversations  
5 with Bill Shaw where you discussed if we could get  
6 the civil matter resolved the criminal matter would  
7 go away?

8 A. No.

9 Q. Never had those conversations?

10 A. No. I wanted a conviction. I said  
11 that earlier.

12 Q. You would do anything to get a  
13 conviction, wouldn't you? At that point you would  
14 do just about anything you could to get a  
15 conviction?

16 A. No. I wouldn't.

17 MR. BAYLISS: I would move to introduce  
18 Exhibit Number 19, the letter.

19 THE COURT: Introduced and mark as  
20 Plaintiff's --

21 MR. BUGG: I don't think it's  
22 appropriate to introduce a multi-page letter. He  
23 can ask him about it but there are a lot of things  
24 in there that are extraneous.

25 MR. BAYLISS: It's a letter from

M. Ingles - Cross

1 Q. Right, and you remember that one  
2 meeting in November when you and Mr. Russell ran up  
3 to Mr. Shaw when you were sitting down trying to get  
4 the case over with and handed him a bunch of paper  
5 which no one had seen before?

6 A. That is an absolute false  
7 characterization of what happened that day.

8 Q. Now, you remember me calling you as an  
9 adverse witness, do you not?

10 A. Yes.

11 Q. And you remember me asking you some  
12 questions about whether you told some people certain  
13 things, do you not?

14 A. Yes.

15 Q. And you remember seeing each and every  
16 one of those people asking you questions, come into  
17 this courtroom and testify absolutely contrary to  
18 what you said, don't you remember that?

19 A. No, I don't. I told you some things  
20 that I told Miles Booth and I think he agreed that  
21 we discussed that Bob was a crook and I warned him  
22 about doing business with Bob.

23 Q. Let me go through these. Remember  
24 speaking to Miles Booth and warning Miles Booth  
25 about doing business with Marina Tech because you

1 were going to get Bob Dively?

2 A. No, it wasn't because of that. It was  
3 for his own good.

4 Q. Remember telling Miles Booth that you  
5 were going to put Bob in jail, said you would have  
6 indictments against him?

7 A. No.

8 Q. Remember telling Allison King he was a  
9 thief, he had stolen from Sea Technology?

10 A. No.

11 Q. Remember telling Gary McAllister he was  
12 a slimeball piece of shit?

13 A. No.

14 Q. That he was a thief?

15 A. I told Gary he didn't pay for the  
16 pedestals.

17 Q. Remember telling Gary McAllister that  
18 he had stolen money out of Sea Tech?

19 A. I remember that.

20 Q. And you would find out what kind of guy  
21 he was if you deal with him, that you were going to  
22 put him away?

23 A. I may have told him he would find out  
24 what kind of guy he is.

25 Q. Tom Petty, he had stolen property from

M. Ingles - Cross

1 the company?

2 A. I don't recall but I don't dispute  
3 that.

4 Q. Remember telling Gary Taylor that you  
5 had gotten felony convictions and he had been led  
6 off in handcuffs?

7 A. Everything Gary said is false.

8 Q. Remember telling Bill Tindal you better  
9 look into doing business with Dively because he  
10 would be put in jail?

11 A. No. I told him he better look into  
12 doing business and gave him telephone numbers and he  
13 called Seitzman and he called him.

14 Q. We can be here forever or you can  
15 answer questions. Do you remember telling Bill  
16 Tindal that he ought to look into doing business  
17 with Dively because you would put him in jail?

18 A. I didn't tell him.

19 Q. Fred Pesch, that you controlled  
20 everyone in Gloucester County?

21 A. No. We've already been through that  
22 and Fred is completely wrong.

23 Q. All these people are wrong, aren't  
24 they?

25 A. No. I didn't say that.

1 Q. Fred Pesch that you even controlled the  
2 new circuit judge because he just bought land from  
3 you?

4 A. He wasn't a judge and he hadn't bought  
5 land from me until seven or eight months after we  
6 did business with Fred Pesch, and he didn't become a  
7 judge until January of 1990, two years after we did  
8 business.

9 Q. Did you tell Frieda Cox you had  
10 Gloucester locked up and controlled Gloucester  
11 County?

12 A. No.

13 Q. Did you tell Frieda Cox you were going  
14 to keep Jane Hogge at the company until you didn't  
15 need her any more?

16 A. Not at all. What happened there is I  
17 told her Bob would keep her in Williamsburg. This  
18 is during the lunch and we did discuss that, and he  
19 would use Jane when he needed her through this  
20 litigation.

21 Q. Did you tell Frieda Cox you were going  
22 to have that fucking bastard locked up and wasn't  
23 going to stop until I have the bastard locked up and  
24 I have my ways of doing it? You were going to ruin  
25 Bob's business, make sure he was going to be out of



M. Ingles - Cross

1 business before the year is up?

2 A. No.

3 Q. Did you tell Frieda Cox you wanted  
4 everything Bob owned, if you could get his house in  
5 King's Mill you would get it?

6 A. No. That's false.

7 Q. All these people came in here and  
8 stated falsehoods?

9 A. Not all of them. Some told the truth.

10 Q. You say you went to the sheriff's  
11 office?

12 A. No, I didn't. I said the sheriff and I  
13 had passed.

14 Q. Was that before you had seen Alvin  
15 Anderson?

16 A. No. I think it was after I saw Alvin  
17 Anderson because it was after Mr. Keating's call and  
18 that call came in around the second time I met with  
19 Alvin Anderson.

20 MR. BAYLISS: That's all I have.

21 MR. BUGG: I don't have any redirect.

22 THE COURT: Have a seat by your  
23 attorney. Who's your next witness, Mr. Bugg?

24 MR. BUGG: Your Honor, do you want to  
25 take five?

R. Risley - Direct

1 THE COURT: No. They are giving me  
2 start the clock signal.

3 MR. BUGG: Mr. Risley, Your Honor.  
4

5 RICK RISLEY, called as a witness by and  
6 on behalf of the Defendant, having been first duly  
7 sworn, was examined and testified as follows:  
8

9 DIRECT EXAMINATION

10 BY MR. BUGG:

11 Q. Would you state your name, please.

12 A. Rick Risley R-i-s-l-e-y.

13 Q. What do you do for a living?

14 A. I work for Implied Ocean Technology.

15 Q. In 1988 how were you employed?

16 A. At a firm Devon R. Corporation.

17 Q. During that year did you have occasion  
18 to meet Mr. Dively?

19 A. Yes, I did.

20 Q. In connection with what?

21 A. In the proposed acquisition of Sea  
22 Tech.

23 Q. Over what period of time were you  
24 talking to Mr. Dively about a proposed acquisition  
25 of Sea Technology?

R. Risley - Direct

1           A.       Approximately two years.

2           Q.       During that approximately two years did  
3 you have conversations with Mr. Dively about his  
4 attitude toward Mr. Ingles?

5           A.       Yes.

6           Q.       What did he say about that?

7           A.       The first question we had asked  
8 originally when we tried to purchase the company was  
9 that from the appearance of the documents we  
10 represented why would they want to sell this and he  
11 at that time had told us that --

12          Q.       What do you mean why would you want to  
13 sell it? What was it about the information you were  
14 supplied?

15          A.       The information we were supplied at  
16 that time looked -- it was put out by a business  
17 broker and looked to be an extremely good business,  
18 very profitable business, and the first question  
19 came to mind is why would you want to sell something  
20 that is this profitable. He indicated at that point  
21 that he and his partner could not get along and that  
22 the primary reason was he wanted to split the  
23 company up, that he felt that he had been working  
24 and doing all the business and that he had some  
25 disparaging remarks to say about Mac Ingles and that

R. Risley - Direct

1 they wanted to split up.

2 Q. Did he make any statement to you about  
3 whether he intended to remain in business with  
4 Mr. Ingles starting back in 1988?

5 A. Can you repeat that?

6 Q. In connection with these potential  
7 sales --

8 MR. BAYLISS: Judge.

9 THE COURT: He's leading. Rephrase the  
10 question.

11 BY MR. BUGG:

12 Q. Did you have any conversation about  
13 whether in a potential sale agreement Mr. Dively  
14 was --

15 THE COURT: Go ahead and let him answer  
16 the question.

17 MR. BAYLISS: Go ahead and testify.

18 BY MR. BUGG:

19 Q. Remaining in business with Mr. Ingles?

20 A. No. It was clear from the outset that  
21 he had no interest in remaining in business with him  
22 whatsoever.

23 Q. In 1990 did you attend the boat show?

24 A. Yes.

25 Q. When and where?

R. Risley - Direct

1           A.       In 1990 I attended the New York Boat  
2 Show in January of 1990.

3           Q.       With whom did you attend that show?

4           A.       With Mr. Dively.

5           Q.       And what was the purpose of your  
6 attending that show?

7           A.       To basically get a feel of where the  
8 company was within the marketplace, how other  
9 customers perceived the company, what competition  
10 thought of the company and to give Bob and I a  
11 chance to further discuss our proposition.

12          Q.       Did you work at the Sea Tech booth with  
13 Mr. Dively at the New York Boat Show?

14          A.       Yes, I did.

15          Q.       What products were on display?

16          A.       There was the power pedestal and the  
17 dock box.

18          Q.       What did Mr. Dively tell you about the  
19 dock box?

20          A.       That that was a new product that he had  
21 put together and developed.

22          Q.       Did he tell you that that product was  
23 in production?

24          A.       No.

25          Q.       Did he tell you that that product --



R. Risley - Direct

1 that he had orders for that product?

2 A. No.

3 Q. What did he tell you that box was?

4 A. A prototype of what he had put together  
5 that would be a future product of the company.

6 Q. Did you have any discussion with  
7 Mr. Dively about whether you should share any of  
8 that information with Mr. Ingles?

9 A. Yes. He at that point wished that I  
10 wouldn't share that information, that that remained  
11 between he and I and that that was a development of  
12 his.

13 Q. Did he give you any instructions about  
14 how you should -- what you should tell people coming  
15 to the booth who might ask about Mr. Ingles'  
16 involvement in Sea Tech?

17 A. At that point he had led me to believe  
18 we were getting close to an agreement to purchase  
19 the firm and that we should present to the people  
20 coming to the boat show that Mac was not part of the  
21 firm and that they would basically speak with the  
22 new management of the firm.

23 Q. Now, let me back you up a month or so  
24 to December of 1989. Did you have occasion to visit  
25 Sea Tech's office itself, the plant itself with

R. Risley - Direct

1 Mr. Dively?

2 A. You said back --

3 Q. In December of 1989. Let me ask you it  
4 this way: Was there a time that you went to Sea  
5 Technology and Mr. Dively showed you a plug for a  
6 dock box?

7 A. Prior to going up there he had showed  
8 me work he was doing to develop the box, yeah.

9 Q. What did he show you?

10 A. Basically what was very rough, what  
11 could be referred to as a plug or what the mold  
12 would be made from that he was finishing off within  
13 the business.

14 Q. Mold for what?

15 A. For the dock box.

16 Q. Where were you when he showed you this?

17 A. In the shop behind the offices of Sea  
18 Technology in Gloucester.

19 Q. Did Mr. Dively make any statement to  
20 you at that time about whether he did or didn't want  
21 you to share that information about that plug, the  
22 new dock box, with Mr. Ingles?

23 A. He maintained all along that that was a  
24 development that he was doing and that that should  
25 remain between us.

R. Risley - Direct

1 Q. Did Mr. Dively tell you business was  
2 going down in December and January?

3 A. No. Primarily we were asking for  
4 numbers the whole way along as to what the business  
5 was doing. He was not supplying those numbers. He  
6 was not giving us any indication of what the company  
7 was doing or was not doing. That was one of the  
8 reasons why we went to the show to try to ascertain  
9 it.

10 Q. Now, were some agreements, draft  
11 agreements, prepared regarding a potential purchase  
12 by you and your group at Sea Tech?

13 A. There was an agreement prepared I  
14 believe. I'm not exactly sure of the date. It was  
15 either October or September at the Chicago Boat  
16 Show, the M-Tech show at Chicago and the agreement  
17 was drafted by Bob Dively.

18 Q. Was there a provision in that agreement  
19 about a royalty agreement?

20 A. Yes.

21 Q. What is a royalty agreement and what  
22 did the document say briefly?

23 A. Briefly that he would be paid a royalty  
24 on new products to be developed and marketed by the  
25 new company over a period of time as part of the

R. Risley - Direct

1 acquisition price.

2 Q. In mid February did you have any  
3 meetings with Mr. Dively and Mr. Ingles about this  
4 potential purchase?

5 A. Yes, I did, at my request.

6 Q. Did the subject of this royalty  
7 agreement come up?

8 A. That was the purpose of the meeting.

9 Q. Tell me how it developed that the  
10 meeting took place. You said that was the purpose  
11 of it. Why?

12 A. The whole time in the two years that we  
13 were negotiating for the purchase it was understood  
14 from the very outset that the agreement between the  
15 two partners had to be equal. What one got the  
16 other had to get. If we were to proceed to close we  
17 had several hurdles to come over. Every time we  
18 came close to an agreement we wouldn't be able to  
19 consummate that.

20 What seemed to be a break-through was  
21 if Bob created new products he would be paid a  
22 royalty over a certain period of time. That would  
23 make it so the agreement between the two existing  
24 partners were not equal. I told him I don't think  
25 this would work and he assured me he thought it

R. Risley - Direct

1 would, and as we proceeded along I became nervous  
2 about this because it was absolutely understood the  
3 two had to be the same. So in February I requested  
4 a meeting with Mac Ingles to sit down to get face to  
5 face with him to tell me whether or not he would  
6 agree to a purchase agreement that included an  
7 agreement for royalty that would not be equal to  
8 what he was getting.

9 Q. When was that meeting? Do you  
10 remember?

11 A. It was in February. There were  
12 actually two meetings. It was one during the course  
13 in the middle of the week of which I had asked to  
14 meet with Mac at that point. I was in Mr. Dively's  
15 office. He told me to go ahead and call him, so I  
16 called him from his desk and that evening of that  
17 meeting I believe that was like a Wednesday or a  
18 Thursday we went to Nick's Seafood Pavilion in  
19 Yorktown. Bob dropped me off and left. I met with  
20 Mac Ingles. At that point I had reason to have more  
21 concern that this whole thing had not been totally  
22 disclosed and this agreement may not work and  
23 requested a second meeting with the two of them  
24 together on that following Saturday.

25 Q. Was there discussion about the royalty



R. Risley - Direct

1 agreement?

2 A. At that time, yes.

3 Q. What was the substance of that  
4 conversation?

5 A. Mac basically had no concern with the  
6 fact there would be a separate agreement to pay Bob  
7 Dively royalties. What was more of concern that we  
8 started to become aware that there was other things  
9 I didn't know was going on nor did he know was going  
10 on.

11 Q. In connection with that royalty  
12 agreement did the subject of a dock box come up?

13 A. That was one. There were two products  
14 basically in question with the royalty question.  
15 One was the dock box and one was referred to loosely  
16 as a mini power pedestal which was to be used mainly  
17 in the Great Lakes area.

18 Q. Did Dively tell Mac Ingles that the  
19 prototype dock box was in existence during that  
20 meeting?

21 A. Not that I recall.

22 Q. Did you tell Mac or say something in  
23 front of Mac that the prototype dock box was in  
24 existence?

25 A. I assumed he knew because it was on

R. Risley - Direct

1 display at the New York Show.

2 Q. Was he there at the New York Show?

3 A. No.

4 Q. Had you had any conversations with  
5 Mr. Ingles about the prototype box?

6 A. No.

7 Q. Did you at that moment know that  
8 Mr. Dively had an order for 212 of those dock boxes  
9 from Dock of the Bay Marina?

10 A. No, I didn't.

11 Q. Did you know at that moment that he was  
12 in production of 25 of those boxes for Dock of the  
13 Bay Marina?

14 A. No.

15 Q. Did you know that he had an order for  
16 boxes from Shark Island?

17 A. No.

18 Q. Did you know that he was in production  
19 for boxes for Shark Island?

20 A. No.

21 Q. Did you have any idea that this  
22 prototype box was in production at all?

23 A. No.

24 Q. Would you have agreed to a royalty  
25 agreement if you had?

R. Risley - Direct

1 A. No.

2 Q. Did you ever agree with Mr. Dively to  
3 reimburse him for any expenses that he had incurred  
4 in developing the dock box?

5 A. No.

6 Q. Why?

7 A. It never occurred because with the fact  
8 that there shouldn't have been any significant  
9 development expenses at that point. This was a  
10 future product to be developed and certainly that  
11 prototype would not have incurred any significance  
12 costs at that point. There was no reason to.

13 Q. Did you give Mr. Dively a deposit in  
14 connection with your efforts or your interest in  
15 purchasing the company?

16 A. Yes.

17 Q. How much money did you give him?

18 A. I gave two checks, \$5,000 each for a  
19 total of \$10,000.

20 Q. What was the purpose of that deposit?

21 A. It was a good faith deposit to  
22 represent any further negotiations with any further  
23 purchasers.

24 Q. Did he tell you he was negotiating with  
25 Bishop?

R. Risley - Direct

1 A. No.

2 Q. Did you know anything about Bishop?

3 A. No. Had I known about him I wouldn't  
4 have given him the \$10,000.

5 Q. When did you find out about Bishop?

6 A. Not until after I came down here in  
7 March.

8 Q. To run the company?

9 A. That's correct.

10 Q. Did you get your \$5,000 back from  
11 Mr. Dively?

12 A. After I took him to court.

13 Q. Did he tell you he was going to give it  
14 back?

15 A. Yes. It was during the time he was  
16 thinking about leaving the firm. He was talking to  
17 me on the telephone because we were in somewhat  
18 close communications at that point, and he was  
19 confiding in me that he was thinking, in fact, of  
20 leaving and I told him at one point that I wanted to  
21 put a lawsuit against Sea Tech for the return of  
22 that deposit and he asked me not to do it, and he  
23 assured me at that point that he would return any  
24 money that I had given him in any way to me and he  
25 had told me that it was Mac Ingles that was not

R. Risley - Direct

1 telling me things about the firm, that he would be  
2 straight with me and I asked him for an instance of  
3 what he was not telling me and he told me that,  
4 well, for instance, the UL listing.

5 Q. Let me stop you there. After you got  
6 to Sea Tech in March did you look into the UL  
7 listing matter?

8 A. I did. That was one of the first  
9 things I did. Without a UL listing that pedestal  
10 was basically worthless.

11 Q. What did you learn about the UL listing  
12 that Sea Tech used to have?

13 A. To back up if I may to finish the  
14 statement, he told me that the UL listing had been  
15 dropped. The reason he gave me on the telephone was  
16 it was a failure to pay the fees involved.

17 Q. Who did he attribute that?

18 A. To Mac Ingles. He was controlling the  
19 checkbook. When I got to Sea Tech and started to go  
20 through the material and called UL it had nothing do  
21 do with the fees. The fees were minimal. It was  
22 like a \$400 check. What had been changed was the  
23 basic specifications of how the pedestal had  
24 originally been approved by UL that the materials  
25 had been changed, and the fact that the materials



R. Risley - Direct

1 had been changed caused the UL specifications to be  
2 out of sync plus there was not proper reporting  
3 procedures done.

4 Q. What did you have to do to get the UL?

5 A. It took about a year and a half of  
6 changing materials back, bringing up the reporting  
7 correctly, having the units reinspected and after a  
8 period of time I got the UL listing back.

9 Q. What did it cost?

10 A. \$430, \$60, plus the aggravation and  
11 time of going through and doing it.

12 Q. Now, did there come a time in March  
13 when Mr. Ingles called and told you Mr. Dively left  
14 the company? Did you call him?

15 A. No. It was a very confusing period of  
16 time. At the beginning of March Bob indicated to me  
17 that he was leaving the firm. I was getting very  
18 concerned because my interest was in purchasing the  
19 firm. So I was going to Mac at that point and  
20 saying, what the hell is going on here, and at some  
21 point in time it was like the week before I had come  
22 down Bob had gone, had come over here, had already  
23 set up the business and was operating it. In fact,  
24 I called him at the business here and Mrs. Dively  
25 answered the phone. Mac called me and said, look, I

R. Risley - Direct

1 think that Bob is gone. I've got to keep Sea Tech  
2 running, are you willing to come down here and take  
3 this over.

4 Q. Did you go down?

5 A. I told him -- I think that was like a  
6 Monday or Tuesday. I told him things were moving  
7 rapidly and confusingly. I said, if things are  
8 still the same on Friday I will be there on Monday.  
9 He and I talked on Friday at 3:00, and on March the  
10 19th I was there.

11 Q. Would you describe to the ladies and  
12 gentlemen of the jury the situation at Sea Tech when  
13 you got down Monday, March 19th?

14 A. It was utter chaos. The employees were  
15 standing there basically not working. There was  
16 absolutely no inventory, no tools. The phone was  
17 ringing off the hook. The secretaries had left at  
18 that point. One had come back or was on her way.  
19 She wasn't there that Monday. She came back the  
20 next day. Nothing was being done nor could anything  
21 be done. It was simply utter chaos. Papers were  
22 all over the place. There was no organization and  
23 it was a pretty sad situation.

24 Q. Did you try to sort through the records  
25 and papers of the company?

1           A.       I started setting up tables in  
2 different areas and started going through the  
3 drawers and started piling things up and sorting  
4 things out to figure out where we were, and as  
5 customers were calling in I would start sifting  
6 through the papers to find their orders.

7           Q.       I hand you what's been marked  
8 Defendant's Exhibit 61A. In the course of going  
9 through the piles of paper hither and yond in the  
10 office did you find that document?

11          A.       Yes. I didn't find it right away. I  
12 found it within a couple of days of being there.

13          Q.       Was it in the middle of Jane Hogge's  
14 desk on top of a pile?

15          A.       Not when I found it.

16          Q.       Was it in a prominent place anywhere?

17          A.       No. I found it -- one of the tables we  
18 set up and started to sort papers, this was in one  
19 of those piles of papers.

20          Q.       Was anything attached to it?

21          A.       No. This was the document.

22          Q.       I hand you 61 and 60, defendant's  
23 exhibits. Were these pieces of paper attached to it  
24 in any way?

25               MR. BAYLISS: He just said nothing

R. Risley - Direct

1 was.

2 MR. BUGG: Is that what he said?

3 THE COURT: No. That's what he said.

4 THE WITNESS: No, they weren't.

5 BY MR. BUGG:

6 Q. Do you remember seeing 60 and 61 at  
7 some point?

8 A. At some point later on after I had been  
9 there. It was within the next couple of weeks.

10 Q. Did you make any connection between  
11 these and that?

12 A. Meaning did I think that they were part  
13 of the same memo?

14 Q. Yes.

15 A. No.

16 Q. Now, that first week at Sea Tech, what  
17 was the customer situation like?

18 A. There was somewhere between -- calls  
19 came in somewhere between 40 and 50 phone calls a  
20 day. Approximately. I don't know the exact  
21 number. I'd have to go back -- between \$350,000 and  
22 \$400,000 ordered in-house. The minimum that those  
23 orders were running late at that point was 30 days.  
24 I remember counting one night when I left there at  
25 8:30 or so, I had a hundred messages lying on my

R. Risley - Direct

1 desk. They should have been installed. This was  
2 the middle of March and they should have been  
3 installed.

4 Q. Did you get a call from anybody at  
5 Shark Island?

6 A. I got a call from Howard Hoffman at  
7 that time within a short period of time after I had  
8 been there.

9 Q. What was the substance of that  
10 conversation?

11 A. He wanted to know where his boxes are.

12 Q. What was your response?

13 A. I didn't know what boxes he was talking  
14 about.

15 Q. Did you ever look for any Shark Island  
16 customer file or records?

17 A. No. The only indication of what orders  
18 we had was what was listed on that memo.

19 Q. The question was, did you look for a  
20 customer file or information on Shark Island?

21 A. Yeah.

22 Q. Did you find anything?

23 A. No.

24 Q. Did you have any calls regarding a dock  
25 box and shipping containers for a dock box?



R. Risley - Cross

1 over if you can't get this thing done in a  
2 reasonable period of time.

3 BY MR. BUGG:

4 Q. Would you tell the jury the statement?

5 A. Bob Dively over a period of two years  
6 we talked to him made several statements, and he  
7 basically took the approach that he didn't have a  
8 lot of faith or trust in lawyers or any various  
9 business partners which we had brought before him to  
10 purchase the company, and his basic approach was  
11 that he wants to make sure that things were done on  
12 his terms and that he controlled the situation. It  
13 was different partners we had brought forth always  
14 had some kind of a problem that he had come up  
15 with.

16 MR. BUGG: Answer any of Mr. Bayliss'  
17 question.

18 CROSS-EXAMINATION

19 BY MR. BAYLISS:

20 Q. Just three areas I want to deal with.  
21 Your dealings with Sea Tech, Bob Dively, et cetera,  
22 began when?

23 THE COURT: Your dealings with Sea Tech  
24 and Bob Dively, when did they begin?

25 THE WITNESS: I don't know the exact

R. Risley - Cross

1 date. It was early part of 1988. Approximately two  
2 years before I came down here in March of '90.

3 BY MR. BAYLISS:

4 Q. And the purpose of the dealings were to  
5 acquire the company?

6 A. That's correct.

7 Q. And your negotiations originally were  
8 with Bob Dively?

9 A. Yes. Almost all the negotiations were  
10 with Bob Dively.

11 Q. And they ultimately led up to -- turn  
12 in plaintiff's exhibit book to Exhibit 9. This has  
13 already been introduced into evidence. If you could  
14 just thumb through here. Do you remember these  
15 documents, copies of proposed agreements between you  
16 and Sea Tech?

17 A. As far as I know, yes.

18 Q. I'll refer you to some specifics in a  
19 second. As I said, your discussions resulted in  
20 drafts back and forth of proposed sales documents?

21 A. Somewhere between 13 to 15 different  
22 drafts.

23 Q. And during those discussions it was  
24 represented to you by both Bob Dively and Mac Ingles  
25 that Bob Dively and Mac Ingles were 50/50

R. Risley - Cross

1 shareholders?

2 A. It had been represented by Bob Dively.

3 Q. Represented by Mac Ingles, too, that  
4 Bob Dively was a 50 percent stockholder?

5 A. Not at the outset. Bob Dively wasn't  
6 involved in hardly any of the negotiations at all.

7 Q. During the course of the negotiations  
8 it was represented to you by Mac Ingles and Bob  
9 Dively that Bob Dively was a 50 percent stockholder?

10 A. Yes.

11 Q. And Mac Ingles said it and Bob said it,  
12 that Bob was a 50 percent stockholder?

13 A. There was no discussions with Mac  
14 Ingles up to the point where any specific questions  
15 had been asked of Mac Ingles that he was a 50  
16 percent -- that he and Bob were 50 percent  
17 stockholders. Mac Ingles was not involved in the  
18 negotiations to that extent up until we got in the  
19 February meetings.

20 Q. Between the time you got involved until  
21 the time Bob Dively left -- that's a two year period  
22 approximately -- it is a true statement, is it not,  
23 that Mac Ingles at one point and Bob Dively at one  
24 point represented to you that Bob Dively was a 50  
25 percent stockholder in Sea Tech?

R. Risley - Cross

1 A. Over the period of two years, yes.

2 Q. And in fact, all these documents are  
3 drawn representing Bob Dively to be a 50 percent  
4 stockholder?

5 A. That's correct.

6 Q. In fact, you never knew until this  
7 litigation began that Mac Ingles ever took the  
8 position that Bob was anything but a 50 percent  
9 stockholder, did you?

10 A. I would like to be very specific in  
11 answering that.

12 Q. Let me ask the question again and give  
13 a yes or no. Isn't it true, Mr. Risley -- before we  
14 get to that. Who did you say you worked for now?

15 A. Implied Ocean Technology.

16 Q. What is that?

17 A. That's a company I own that does  
18 marketing for a firm that produces deep sea fishing  
19 equipment.

20 Q. What is that firm?

21 A. Marine Sign Technology.

22 Q. Who is involved in that?

23 A. Five of us, Marty, Will, Cox and Mac  
24 Ingles.

25 Q. So you are a business partner of Mac

R. Risley - Cross

1 Ingles today?

2 A. No.

3 Q. You are not a business partner of Mac  
4 Ingles?

5 A. No.

6 Q. Is your income solely related to the  
7 success you do and marketing for Mac Ingles'  
8 product?

9 A. No.

10 Q. It's not?

11 A. No.

12 Q. It has a big hinge on it, doesn't it?

13 A. Mac Ingles is an investor in the  
14 company but I do not work for Mac Ingles.

15 Q. And Mac Ingles is an investor in a  
16 company with a bunch of people that are his clients,  
17 right, just like Sea Tech, he's put more money in  
18 another company?

19 A. That's correct.

20 Q. And they're his clients?

21 A. I don't know if they're his clients or  
22 not.

23 Q. And you know he's a lawyer, don't you?

24 A. Yes.

25 Q. Ever since you got -- ever since Bob



R. Risley - Cross

1 left up until now you've had a business relationship  
2 with Mac, have you not?

3 A. That's correct.

4 Q. You don't have a business relationship  
5 with Bob, do you?

6 A. No.

7 Q. Never had a business relationship with  
8 Bob, have you?

9 A. No.

10 Q. Go back to the question to be very  
11 specific, and you can explain any answer you want,  
12 but I'm going to ask you questions that are just yes  
13 or no. Is it not true, Mr. Risley, that until Bob  
14 Dively left Sea Technology, Limited in March of 1990  
15 that you never heard Mac Ingles say anything other  
16 than he was a 50 percent stockholder?

17 A. That's right. I never heard him say  
18 that he was or wasn't a 50 percent stockholder and  
19 if I can explain that --

20 Q. Let's go back because you just said  
21 something inconsistent. Sir, isn't it a fact that  
22 Mac Ingles told you sometime between the first time  
23 you met Bob and March the 9th when Bob left that Mac  
24 was a -- that Bob was a 50 percent stockholder, very  
25 simple question?

R. Risley - Cross

1 THE COURT: Answer it yes or no and  
2 then clear it up like you wish to.

3 THE WITNESS: I'm trying to.

4 THE COURT: Go ahead.

5 THE WITNESS: There was no indication  
6 the two of them were not 50 percent stockholders.  
7 One of the main things we were asking the whole time  
8 since we started negotiating this was for various  
9 documents. One of those documents was proof of who  
10 was the stockholders of the corporation. We had  
11 never up until March 19th, '90 up until this day  
12 ever been given answer of any documents.

13 MR. BAYLISS: Let's go on.

14 THE COURT: He is entitled to finish  
15 answering his question. Go ahead and finish if you  
16 wish to.

17 THE WITNESS: So that is why it's not a  
18 yes or no answer. We had no idea because we had  
19 never been given any proof of what -- that was the  
20 reason why half of the negotiations failed because  
21 we could not get any documents or factual material  
22 from Sea Tech as to what the situation was.

23 BY MR. BAYLISS:

24 Q. And you, in fact, made a deposit to buy  
25 Sea Tech and the check is in front of you for

R. Risley - Cross

1 \$139,800, right?

2 A. That's correct.

3 Q. Done on October 1989?

4 A. That's correct.

5 Q. The check bounced, didn't it?

6 A. Correct.

7 MR. BAYLISS: We move to introduce that  
8 as Exhibit 39.

9 THE COURT: Introduced and marked as  
10 Exhibit 39.

11 (The document referred to was marked by  
12 the Court as Plaintiff's Exhibit 39, and received  
13 into evidence.)

14 THE WITNESS: Excuse me. I would like  
15 to explain this.

16 THE COURT: Explain the check?

17 THE WITNESS: Yes.

18 MR. BAYLISS: The check bounced. He  
19 said yes. Judge, I asked him a simple question.  
20 The check bounced.

21 THE COURT: Let's get on with it.

22 BY MR. BAYLISS:

23 Q. If Mr. Ingles testified he didn't know  
24 anything about this dock box until Bob Dively left  
25 there's no doubt in your mind today as you sit here

R. Risley - Cross

1 that you discussed this royalty agreement and these  
2 dock boxes in the meeting that you had with Mac  
3 Ingles and Bob Dively on February the 8th, 1990?

4 A. In February we discussed the royalty  
5 agreement and the dock boxes.

6 Q. So you discussed with Mac Ingles in  
7 February of 1990 the existence of this dock box?

8 A. I didn't discuss the existence of the  
9 dock box. I discussed the royalty agreement and the  
10 royalty would be paid on the development of the dock  
11 box.

12 Q. On the dock box?

13 A. Correct.

14 Q. So that was disclosed?

15 A. The royalty agreement was disclosed.

16 Q. And the dock box was discussed?

17 A. No.

18 Q. Remember testifying a couple of times  
19 before --

20 A. I very well remember.

21 Q. "QUESTION: If Mr. Ingles testified he  
22 didn't know anything about this dock box until Bob  
23 Dively left, there's no doubt in your mind you  
24 discussed this royalty agreement and this dock box  
25 in this meeting that you described that you now



R. Risley - Cross

1 say" --

2 MR. BUGG: What are you reading from?

3 BY MR. BAYLISS:

4 Q. From his cross-examination of his  
5 testimony at the civil trial, Page 13. "That you  
6 discussed this royalty agreement and this dock box  
7 in this meeting that you described that you now say  
8 is in February, February 8th, 1990?"

9 "ANSWER: It was discussed. It was  
10 mentioned at the meeting there was a royalty  
11 agreement going to be there and it was discussed on  
12 the 8th and we discussed it further on the 10th."

13 "QUESTION: Had you discussed the dock  
14 box, its existence, what it was, the fact that it  
15 was a new product, and the fact that Bob Dively  
16 would be paid a royalty if it closed, right?"

17 "ANSWER: Discussed that he was going  
18 to build a dock box, put it in production and we  
19 would be paying him a royalty in sales over a  
20 certain number with that dock box."

21 "QUESTION: If the deal closed?"

22 "ANSWER: That's correct."

23 "QUESTION: And Mac Ingles didn't have  
24 any problem with him making a royalty on the dock  
25 box since it was a new product, right?"



R. Risley - Redirect

1 "ANSWER: That's correct."

2 A. The royalty to be paid on it and the  
3 future development was to be paid. A particular  
4 dock box was not discussed.

5 Q. You had seen the dock box?

6 A. I had seen it.

7 MR. BAYLISS: I don't have any other  
8 questions, Judge.

9 MR. BUGG: Just a couple, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BUGG:

12 Q. Mr. Risley, would you get in front of  
13 you Plaintiff's Exhibit 9, the sheet of documents.  
14 Do you have that in front of you?

15 A. Exhibit 9?

16 Q. Yes, sir.

17 A. Bill of sale agreement?

18 Q. Yes, sir. It's an employment agreement  
19 and non-competition agreement among those documents?

20 A. Non-compete agreement.

21 Q. Who prepared those?

22 A. I think these were prepared by Mike  
23 Pagnasis' office in Boston.

24 Q. And where are they?

25 A. In Boston on School Street.

D. Spencer - Direct

1 reputation in the community where he lives for  
2 telling the truth?

3 A. Impeccable, of the highest standard for  
4 telling the truth.

5 MR. RUSSELL: Thank you, ma'am. Please  
6 answer any questions Mr. Bayliss has.

7 MR. BAYLISS: No questions.

8 MR. BUGG: Subject to some proffers  
9 that we need to make on the record with the jury out  
10 the defendant rests.

11 THE COURT: Any rebuttal?

12 MR. BAYLISS: No rebuttal.

13 THE COURT: Ladies and gentlemen, you  
14 can go out of the courtroom and wander around the  
15 courtyard if you wish but don't come back in the  
16 courtroom until you called.

17 (The jury withdrew from the courtroom.)

18 MR. BUGG: Judge, now that all of the  
19 evidence is in I renew all of the motions made by  
20 the defendant at the close of the plaintiff's  
21 evidence and I suggest, and that is with regard to  
22 each of the counts that were not dismissed and in  
23 addition with regard to the abuse of process count I  
24 would add as an additional ground that Mr. Shaw has  
25 now testified.

1           Mr. Shaw has said that any conversation  
2 which occurred between himself and Mr. Harmon about  
3 resolving the criminal case if the civil case were  
4 resolved was on his initiative without any request  
5 for Mr. Ingles or anybody for him or any directions  
6 from Mr. Ingles or anybody for him or indeed without  
7 the knowledge of Mr. Ingles or anyone for him and  
8 that's unrebutted, Your Honor, that Mr. Shaw had  
9 those conversations but they cannot be attributed in  
10 some way to Mr. Ingles and since that is unrebutted,  
11 Your Honor, for that additional reason with the  
12 reasons that I expressed at the close of all the  
13 evidence I move to strike the abuse of process  
14 count.

15           MR. BAYLISS: Your Honor, for the same  
16 reasons we object to his motion that we made before,  
17 but on the abuse of process before since he raised  
18 that Mr. Shaw's credibility certainly is at issue  
19 here. Mike Harmon said what he said. Mr. Shaw said  
20 that it was at his origination. Certainly there is  
21 ample evidence before this Court at this point for a  
22 jury to decide that issue. Mr. Shaw's file was  
23 replete with Russell or Ingles jackets as I  
24 remember.

25           THE COURT: That's really the main

1 thing involved. That's one of the main things that  
2 bothers me is the information that was contained,  
3 some 13 or 14 as I remember different files in the  
4 file which Mr. Shaw indicated that perhaps one was  
5 his and the rest of them had been prepared or  
6 furnished by your associate, Mr. Russell, and/or  
7 Mr. Ingles.

8 MR. BUGG: If it's abuse of process for  
9 either the alleged victim to supply information to  
10 the Commonwealth or if the alleged victim happens to  
11 be represented by a lawyer, for the lawyer to  
12 provide information to the Commonwealth, then I  
13 submit to Your Honor that there are hundreds,  
14 probably thousands of potential abuse of process  
15 cases out there just because of that. Your Honor  
16 knows that when a lawyer represents someone who is  
17 also the alleged victim of a crime it is not unusual  
18 and indeed often happens that the lawyer is in  
19 communication with and assists the Commonwealth in  
20 some way. Mr. Shaw himself --

21 THE COURT: Mr. Bugg, I agree with you  
22 usually but I will say to you that in my experience  
23 I've never seen the victim to be in as constant and  
24 as much contact with the Commonwealth Attorney as in  
25 this case. That's a little bit unusual to me.

1 MR. BUGG: The victim being in touch  
2 with the Commonwealth Attorney, Your Honor,  
3 that's --

4 THE COURT: No problem with that.

5 MR. BUGG: Even an unusual amount that  
6 can go to the evidence in the malicious prosecution  
7 claim, but that of itself is not an abuse of  
8 process. What you have to show for abuse of process  
9 is some perversion of the process after it's begun.  
10 If the victim is entitled to be in communication  
11 with the Commonwealth the fact that he does it a lot  
12 doesn't change the character of his act. And  
13 Mr. Shaw himself testified in the Fisher case, I'm  
14 sure Your Honor heard about it, the archeologist.

15 THE COURT: Heard about it, I can  
16 testify. I heard that thing six, seven times. I  
17 can testify as to what Fisher did or didn't do.

18 MR. BUGG: I didn't realize Your Honor  
19 had that, but Mr. Shaw stated the law firm in that  
20 gave him a lot more information.

21 THE COURT: Of course he did because  
22 it's a lot more important case from a criminal  
23 case. I don't mean to belittle it but on the scale  
24 of one to ten the Fisher case was a ten and this  
25 wasn't.



1 MR. BUGG: You are talking about a  
2 sliding scale but the principles are the same.

3 THE COURT: The difference between the  
4 Fisher case and this one, no civil lawsuit grew out  
5 of the criminal prosecution. The civil case was  
6 settled before any prosecution at all was begun  
7 against Fisher. He got his million one hundred  
8 thousand dollars before he was ever indicted.

9 MR. BUGG: What has occurred here is  
10 not abuse of process. The mere furnishing of  
11 information to the Commonwealth cannot be abuse of  
12 process.

13 MR. BAYLISS: Let me read the  
14 instruction. The instruction with regard to  
15 plaintiff's abuse of process claim and burden, one,  
16 that the defendant had an ulterior motive in having  
17 the process issued. Certainly that's a jury issue.  
18 And, two, that the defendant used the process after  
19 it was issued not proper in the regular prosecution  
20 of the proceedings. It's not necessary to prove  
21 that the process was issued maliciously. This is a  
22 case where this jury if they choose to believe some  
23 of the evidence before them today can believe that  
24 certainly there came a time when Mr. Ingles should  
25 have backed down.

1                   Certainly there came a time when that  
2                   happened and certainly this jury could believe that  
3                   whether Colton or Adams ever got involved that there  
4                   was an ulterior motive for doing all this and that  
5                   is as he told Frieda Cox, I got my ways, I'll bury  
6                   him, I'll put him out of business, I want to own his  
7                   home, this, that and the other. Both these things  
8                   going on simultaneously, Mr. Russell summarizing  
9                   depositions in the criminal case to get them in the  
10                  prosecution, that's what abuse of process is all  
11                  about.

12                 MR. BUGG: When he talks about Ingles  
13                 ought to back off, I say the law is if you come by  
14                 information in the course of the prosecution that  
15                 suggests that the man is not guilty you should come  
16                 forward with it. That's the law and that's an issue  
17                 in this case but that's a malicious prosecution.  
18                 There is no evidence of abuse of the process. If a  
19                 deposition is taken in a civil case of a witness and  
20                 somebody in the law office prepares an abstract of  
21                 that deposition and gives it to the Commonwealth,  
22                 that's nothing more than furnishing the Commonwealth  
23                 something that makes it easier for the Commonwealth  
24                 to do its job. It's not abuse of process.

25                 MR. BAYLISS: I'll say one other thing,

1 the abuse of what Mr. -- in addition --

2 THE COURT: Let me ask you,  
3 Mr. Bayliss, just what abuse did Mr. Ingles make of  
4 the process? You allege that he abused it. What  
5 have you proven that he abused it?

6 MR. BAYLISS: That he used the civil  
7 litigation to help prosecute a criminal claim, got  
8 all kinds of things out of the civil litigation to  
9 help prosecute the criminal claim. He used the  
10 criminal litigation to put him out of business.

11 THE COURT: That part we might talk  
12 about.

13 MR. BAYLISS: He used the criminal  
14 aspect of it to divert his energies and efforts  
15 here, I got my ways --

16 THE COURT: Isn't that the malicious  
17 prosecution case?

18 MR. BAYLISS: There are two different  
19 standards of proof, Judge. We can't recover twice  
20 but there are two different standards of proof and,  
21 the third thing I'll say is he used all of this as a  
22 vehicle to travel around the country, to go to  
23 different marinas, et cetera, to subpoena records  
24 from those marinas under the auspices of litigation  
25 in order to put him out of business, to defame him,

1 to slander him.

2 THE COURT: I never heard any evidence  
3 that Mr. Ingles subpoenaed any records from other  
4 people. If that was said I haven't heard it.

5 MR. BUGG: I don't think it was, Your  
6 Honor.

7 MR. BAYLISS: You heard plenty of  
8 evidence that he traveled the country during the  
9 course.

10 THE COURT: But I haven't heard one  
11 word of evidence that he as a result of that or as a  
12 result of this he subpoenaed any information, any  
13 records of anybody.

14 MR. BAYLISS: Judge, I read the  
15 instruction.

16 THE COURT: If you have any cases -- I  
17 sustain your motion as to the abuse of process.

18 MR. BUGG: I hesitate to say one  
19 further thing. I've been famous for that with you,  
20 but I would like to argue, Your Honor, again the  
21 emotional distress claim because you made the  
22 statement yesterday that you don't like to plow new  
23 ground. I submit to Your Honor that when you  
24 overruled my objection, my motion to strike the  
25 emotional distress claim, you are plowing new



1 ground.

2 THE COURT: No, I'm not. It's disputed  
3 but there have been statements made from these  
4 witnesses to the effect by Mr. Ingles -- allegedly  
5 made by Mr. Ingles -- he denies it, of course, that  
6 becomes a jury question, but he has told Ms. Cox I'm  
7 going to bury the bastard or words to that effect.  
8 He has told other people he's going to see he's  
9 convicted and so on down the road. If that isn't a  
10 malicious infliction of emotional distress I don't  
11 know what is. I am going to refuse it. If you want  
12 to proffer something for the record for the reason  
13 for it, that's fine. I don't grant that.

14 MR. BUGG: Under Russo versus White he  
15 hasn't shown any of those things.

16 THE COURT: I admit he hasn't shown  
17 going to a doctor, that he hasn't shown any physical  
18 injuries. How do you get physically injured as a  
19 result of emotional distress unless you beat your  
20 head against the wall?

21 MR. BUGG: The Supreme Court says you  
22 have to do it.

23 THE COURT: I asked the question to  
24 myself and I have overruled it and I still overrule  
25 it.



1 MR. BUGG: That's all right. I  
2 understand.

3 THE COURT: What else have we got?

4 MR. BUGG: Your Honor, we had not  
5 finished going over instructions. We need to do  
6 that.

7 THE COURT: Why don't the two of you  
8 retire to judge's chambers, that you go over them  
9 first and I will join you. Those we agree on are  
10 fine. After those we can't agree on we then ask  
11 this young lady to accompany us and she can take  
12 down the reasons for not agreeing on them.

13 (Recess.)

14 THE COURT: Gentlemen, are we all set.

15 MR. RUSSELL: We are, Your Honor. We  
16 have agreed on changes to the verdict forms and we  
17 would like to get those typed.

18 THE COURT: You have agreed on the  
19 form?

20 MR. RUSSELL: We have but we need to  
21 get it typed.

22 THE COURT: You take it out and get  
23 that lady out there to do it. Tell her exactly how  
24 you want to do it.

25 I'm going to number these after I go

1 indict somebody in six felony counts. That's no  
2 reason to put him through 12 months of agony and  
3 suffering at home. That's no reason for him to wake  
4 up three different times in November, January, and  
5 March and kiss his little ten-year-old girl goodbye  
6 and not know if he was coming home. That's no  
7 reason for that.

8 The system didn't work in Gloucester  
9 County, and it didn't work because of Mac Ingles.  
10 Mr. Bugg then says his conduct was nothing short of  
11 common pilfering of the most blatant kind and he  
12 should have been convicted. That wasn't opening  
13 statement. That was an opening argument.

14 You read what I'm going to refer to and  
15 here's a book of exhibits. You heard Mr. Bugg say  
16 he should have been convicted. You saw the  
17 newspaper articles that were admitted into evidence,  
18 Exhibit 31, "Gloucester Judge Acquitted a King's  
19 Mill Man on Charges." People would like you to  
20 believe that that makes him feel real good, that  
21 it's headlines in Williamsburg that he got  
22 acquitted. That doesn't make him feel real good.  
23 Sure he got exonerated, but do you want your friends  
24 to know. According to the transcript of the ruling  
25 Judge Bateman was astounded at the speculation at

1     which the prosecution based its case and there are  
2     about ten or eleven articles about that circulated  
3     in Gloucester and circulated in Williamsburg.

4             He's not proud of that. He's not in  
5     jail today but he's not proud of that and he's not  
6     in jail today because Judge Bateman said he was  
7     astounded at the speculation with which this went  
8     forward. It wasn't enough that the week after he  
9     left -- it wasn't enough for Mac Ingles to file a \$5  
10    million suit against Bob Dively before any of those  
11    prosecutions occur, before any indictments were  
12    issued, when Bob Dively filed in the Circuit Court,  
13    served Mr. Ingles, filed a suit for an accounting  
14    which is just what it is. It's an exhibit and he  
15    comes into court and says, Court, I owe some money  
16    but I think he owes some money, so I want you to  
17    take it all and throw it out and tell us what we  
18    owe. He didn't sue Mac Ingles for a money  
19    judgment. He just said, Court, help us sort it out  
20    and dissolve the corporation.

21            For Mac Ingles it wasn't enough. He  
22    didn't want to sort it out. What he did was file a  
23    big lawsuit and that's in the newspaper, too, and  
24    you will see those articles. That wasn't enough  
25    because on April the 11th this Court denied

1 Mr. Ingles a temporary injunction that he asked for  
2 because Mr. Ingles couldn't prove anything. That's  
3 his first bite at the apple, and just out of context  
4 and out of order we've been to court four times.  
5 This is the fourth time.

6 Temporary injunction order denied, six  
7 count felony indictment -- you have to understand,  
8 and if you've never been through the criminal  
9 process this case didn't go to verdict. What  
10 happens in the criminal process is in this case two  
11 of them were nol-prossed. That means they didn't  
12 even bother to prosecute him. They took him up to  
13 trial, three continuances, kept them pending on him  
14 and they didn't bother to prosecute when everyone  
15 knew at the beginning that he had returned all of  
16 that at the beginning before all the indictments  
17 were issued, and the four that went to trial and you  
18 heard what they were, Pelican Harbor, Dock of the  
19 Bay, Shark Island and the other one which I forget  
20 right now, but you heard it didn't go to verdict  
21 like we are right now.

22 The Court struck the evidence and said,  
23 Commonwealth, you failed to carry your burden to  
24 even get to the defendant's side of the case, and he  
25 didn't even have to put a bit of evidence on because

1 it was preposterous to have brought it. It was  
2 based on so much speculation, more than Judge  
3 Bateman had ever seen.

4 A year later he comes back to court in  
5 March of 1992 and there's another exhibit in here  
6 and he wants to try all these over again. That  
7 exhibit is Exhibit 32 and those two cases were  
8 consolidated, Bob Dively's case was consolidated  
9 seeking an accounting and the Court ruled it's  
10 adjudged, ordered and decreed that Robert C. Dively  
11 is and has always been a 50 percent stockholder of  
12 Sea Tech. But the Court at that time wouldn't  
13 dissolve the corporation so they remained just that,  
14 50 percent stockholders of Sea Tech.

15 You heard Mac Ingles sit here for four  
16 days now and testify that he was a hundred percent  
17 stockholder. It's already been ordered that he's a  
18 50 percent stockholder. He hasn't convinced anybody  
19 yet, and I submit he hasn't convinced this Court he  
20 was a hundred percent stockholder in this case in  
21 the period of time that it mattered. Then you go to  
22 his case and you heard it read into the evidence,  
23 and remind you to look at the pleading when it goes  
24 back in the room with you because it's that thick,  
25 and it's got about 15 or 20 counts in it.



1           That wasn't enough just to sue Bob  
2     Dively because as Mr. Bugg said in his opening  
3     statement den of thieves and he was the chief thief  
4     among them. He had created a den of thieves so he  
5     sued Al Brooks and he sued Linda Dively and I submit  
6     to you he sued them for one -- you didn't hear  
7     anything about Linda Dively during this. She was a  
8     defendant, had to defend herself, go to trial and  
9     the Court struck the evidence again and remember, in  
10    the civil proceedings or the criminal proceedings  
11    the Court can strike the evidence which means you  
12    don't have to put a bit of evidence on to defend  
13    yourself and in that case the Court struck the  
14    evidence against Linda Dively and the Court struck  
15    the evidence against Al Brooks and then made  
16    Mr. Dively put his side of the case on and it says,  
17    upon hearing the remainder of the case the judgment  
18    is entered for the defendants.

19           So what does he do, what does Mac do at  
20    that point? He appeals it so it ain't over yet. So  
21    right now we have that case on appeal and now here  
22    we are with this case and Mr. Ingles would have you  
23    believe that the only reason we are here is because  
24    he deserves it. He brought us here and he had  
25    nothing to do with it.

1           What you have in the exhibit book and  
2     in the exhibits are a list of exhibits that show the  
3     issue of 50/50. Don't get hung up on why that issue  
4     was put before you because that issue had no bearing  
5     on whether Mr. Dively embezzled money or not.  
6     Mr. Dively could be a 50 percent stockholder and he  
7     could still embezzle from his company. I didn't put  
8     that evidence on for that. The evidence was put in  
9     to deal with credibility of Mac Ingles. Every  
10    judge, every court that's heard this has denied that  
11    issue and said that it was 50/50 and there's four,  
12    five, six, and they're Federal tax return forms and  
13    to show you the manipulation of what Mac Ingles did,  
14    he sits there and in March when Bob Dively left,  
15    nothing happened about the 50/50 ownership until the  
16    lawsuits were filed, but then it's very interesting,  
17    very interesting that before any of these trials he  
18    sees I've got a paper trail. I've got to cover it  
19    up, so what does he do.

20           He asks his good friend and accountant  
21    who came and testified, Mr. Eaton, to write  
22    Mr. Dively a letter and say it's changed. Don't  
23    call him because he might have a question, just  
24    write him a letter and say although you were 50/50,  
25    it's changed unilaterally now. Don't have anything

1           You heard somebody talk about staples  
2   and he showed you an original that didn't have  
3   holes. Whether it was stapled or paper clipped  
4   doesn't matter. Says it was attached. We have no  
5   reason to believe it wasn't attached. What ends up  
6   in Bill Shaw's file or Alvin Anderson's file in the  
7   end -- what ends up in his file are Bob's statements  
8   of his accounting and what Ingles says is Bob's a  
9   thief, a crook, Bob embezzles, so we didn't have to  
10  believe him.

11           He didn't want to put Jane Hogge's in  
12  there because he knew they were talking to Jane  
13  Hogge and she was a credible witness so he kept it.  
14  He hid it, and the only reason it came up is Jane  
15  Hogge kept telling people I left an accounting. And  
16  we kept beating, beating on Bill Shaw who kept  
17  beating on Mac Ingles, they keep saying there's an  
18  accounting, and all of a sudden six months after the  
19  indictment it shows up right before the November  
20  trial and why didn't it show up? Because he didn't  
21  want to let it out.

22           And you will hear about advice of  
23  counsel or Commonwealth Attorney but that presumes  
24  that you go with an honest intent. That presumes  
25  you give all information, not just selective

1 information. I always kid people that I'm on a need  
2 to know basis. I as a lawyer with my clients am on  
3 a need to know basis and after 18 years of doing  
4 what I do for a living I believe that, but when you  
5 are talking about taking somebody's life and liberty  
6 away from them you shouldn't be on the need to know  
7 basis. You ought to tell the truth and all of it  
8 and let people make objective decisions on whether  
9 to prosecute somebody. You ought not withhold  
10 information from them that might hurt them but  
11 that's what he did and he let it go forward when he  
12 knew he shouldn't have, and it took Judge Bateman to  
13 stand up and say, stop, it's wrong. He's  
14 astounded.

15 But it wasn't enough. It wasn't enough  
16 just to prosecute him. You heard what he did. You  
17 heard what he did to try to put him out of  
18 business. It wasn't enough to just quit and try to  
19 put him in jail. When he didn't get that injunction  
20 he traveled the country to try to put him under and  
21 he slandered him. He maligned him. It was  
22 intentional. It was vicious what he did to him.  
23 What he did was -- and you heard me ask, and lawyers  
24 have ways of strategizing and whatever, and I  
25 strategized myself and I decided to put Mac Ingles



1 on as an adverse.

2 He's the first guy that sat in the box  
3 before he had a chance to hear what anybody had to  
4 say, and I asked him several quotes from what each  
5 witness I brought in here, did you -- and I'm going  
6 to go through it again, did you tell Miles Booth  
7 that you warned him about doing business with Marina  
8 Tech, said he was going to get them. Allison King,  
9 that he was a thief, he had stolen from Sea Tech.  
10 Did you tell Gary McAllister that Bob was a  
11 slimeball piece of shit. Did you tell Gary Bob was  
12 a thief, that he had stolen money out of Sea Tech,  
13 that you will find out what kind of guy he is, you  
14 were going to put him away.

15 Tom Petty, that he had stolen product  
16 from the company, that he had been misrepresenting  
17 what was going on at Sea Tech. Gary Taylor, they  
18 had gotten felony convictions in August of 1990 and  
19 Bob had been led off in handcuffs. Bill Tindal, you  
20 better look into doing business with Dively, he will  
21 be put into jail.

22 Fred Pesch, you controlled everyone in  
23 Gloucester County, even the circuit judge. Did you  
24 tell Frieda Cox that he had Gloucester -- and here  
25 he meets with Frieda Cox. He meets with Frieda Cox

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1 after Bob has left. Frieda left the company three  
2 months ago. He thinks Frieda is neutral or whatever  
3 and wants to get Bob, so he has lunch with her,  
4 tries to pump her up and see if he can get  
5 information from Frieda, and you heard Bill Shaw.  
6 They told Bill Shaw Frieda was going to be a great  
7 witness.

8 Does Bill Shaw call Frieda in the  
9 criminal case, heck, no, because she's going to tell  
10 the truth. Did you tell Frieda that you had  
11 Gloucester locked up and controlled Gloucester  
12 County, you were going to use Jane Hogge and keep  
13 her at the company and didn't need her anymore to  
14 run the business, stole money and equipment from the  
15 company, you were going to have that fucking bastard  
16 locked up and not stop until the bastard is buried,  
17 I have my ways. I'm going to ruin Bob's business.  
18 Did you tell him I want everything Bob owns. If I  
19 could get the house in King's Mill I would. You  
20 know what that son of a bitch did to me, he resigned  
21 so I'm going to get him. I'm going to get  
22 everything he owns, and he categorically denied each  
23 and every statement when I asked him before he had  
24 the luxury of hearing what those witnesses were  
25 going to say.

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1 convicted him. You wouldn't have had a chance to  
2 convict him if you were on the jury because Judge  
3 Bateman struck the evidence. He wouldn't have  
4 submitted it to you, so you could have been sitting  
5 on that jury right now just like you are sitting on  
6 this one and the judge would have said, I'm sorry,  
7 this man has been wronged. We are not going to let  
8 it get to the jury. It is preposterous that these  
9 charges have been brought. As he stated from the  
10 bench, I am astounded at the speculation on which  
11 this action was based. You wouldn't have ever had a  
12 chance because he says you would have convicted  
13 him.

14           It's like I'm sitting here for the  
15 third time and the only way they can convince you  
16 not to compensate this man for what he's been  
17 through is to try those four counts again. Bob  
18 Dively never denied a lot of those things that  
19 happened. Bob Dively didn't get up there and say I  
20 didn't do Shark Island, I didn't do Dock of the Bay,  
21 I didn't do Pelican Harbor. He admitted everything  
22 and he did it. But does that mean he's got to be  
23 prosecuted for it? Does that mean he's got to wake  
24 up in those mornings thinking he's going to jail  
25 because of the power of the government, an

1 indictment. Ladies and gentlemen, if you've never  
2 been through it, it ain't fun.

3 It ain't any fun and the system didn't  
4 work. The system didn't work then on the indictment  
5 stage, but it worked when he was tried because Judge  
6 Bateman said, it's so much speculation and it ain't  
7 enough to try it there. Same argument in the  
8 criminal trial, and Mr. Bugg sat there in the civil  
9 trial, same whole stack of yellow notes, same every  
10 one. He made the same argument on the civil trial  
11 that he begged -- he begged them to bring when he  
12 left that company, he filed it first. He filed that  
13 lawsuit and said please do everything and let's  
14 account for it. We owe one another.

15 That wasn't enough for Mr. Ingles. He  
16 didn't want to account for it. He wanted to sue him  
17 for \$5 million, and Judge Foster tried that case and  
18 Judge Foster sat here and he's going to say Judge  
19 Bateman is wrong, Judge Foster was wrong and now you  
20 guys got an opportunity to right the wrong of Judge  
21 Bateman, to right the wrong of Judge Foster and to  
22 convict Bob Dively. Even though he's not on trial  
23 let's convict him again.

24 This case is about what I told you.  
25 It's about greed and influence and what I said



1 earlier, the king and you knocked the king down and  
2 the king is going to stand up and get you and he  
3 talks about family. He talks about this or that.  
4 You've got to disbelieve seven people that came in  
5 here, all seven of them have got to be telling a lie  
6 on this defamation stuff and if that wasn't vicious  
7 and vindictive, and all I'm telling you, ladies and  
8 gentlemen, is you don't have to try that case  
9 again. What should have happened, what should have  
10 happened, he should have been -- it should have been  
11 enough just to sue him for \$5 million.

12 It should have been enough just to try  
13 that case and we wouldn't be here today. It wasn't  
14 enough. He had him indicted. He used the system to  
15 its absolute fullest and then what did he do, he  
16 traveled the country and said all those awful things  
17 and how would you like to sit there in Gloucester  
18 County or in the City of Williamsburg and have  
19 people flitting around talking to you and not just  
20 people, this is a lawyer, he is a well educated  
21 lawyer who knows that it's wrong to do that. He  
22 knows it's wrong, but he does it and he does it with  
23 absolute impunity because he's above the system and  
24 no one can touch him, and, ladies and gentlemen, he  
25 can be touched.

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1 instructions of the jury. It becomes your duty and  
2 responsibility to retire to the jury room and arrive  
3 at the verdicts. When you first go to the jury room  
4 what you should do is select one of your members.  
5 It can be any one of the seven of you to preside  
6 over your deliberations. That person is designated  
7 as a foreperson. That person is the only one who  
8 signs the verdict. However, all of you must agree.  
9 Your verdicts, whatever they are, must be  
10 unanimous.

11 If you find in favor of Mr. Dively then  
12 you must also assess whatever damages, compensatory  
13 and/or punitive that you wish to award him in each  
14 of the three counts. The Court has filled out for  
15 you the three possible verdicts in this case. Then,  
16 of course, if you find for the defendant you need do  
17 no more than that, than simply find for the  
18 defendant and the foreperson signs that. Are there  
19 any questions about the verdict before you retire?  
20 Any questions at all before you retire?

21 A JUROR: Can we write on the  
22 instructions as far as notes during our  
23 discussions?

24 THE COURT: I don't know of any reason  
25 why you can't write on them. Anything else? These



1 are the instructions, these are the verdicts and  
2 those are the exhibits that have been introduced.  
3 Except for the transposition of two words it seems  
4 to be in order.

5 (The jury retired to begin  
6 deliberations at 6:45 p.m.)

7 MR. BUGG: Your Honor, I think it's on  
8 the record, but just to make sure I objected to  
9 counsel mentioning an amount of punitive damages in  
10 closing argument and after considering the matter I  
11 asked for a cautionary instruction, I might add, and  
12 after considering the matter Your Honor overruled  
13 that request and left the instructions as they  
14 were.

15 THE COURT: In essence that's what the  
16 Court ruled.

17 MR. BAYLISS: And I opposed that in  
18 accordance with 8.01-379.1 which said that I could  
19 mention the amount I think sought was the language  
20 in it.

21 THE COURT: Your interpretation of  
22 sought is that which you want rather than that which  
23 you sued for?

24 MR. BAYLISS: Correct.

25 MR. RUSSELL: Your Honor, the only

1     thing I know about it is I believed the proper  
2     procedure is to move to reduce your ad damnum and  
3     then you are allowed to mention the ad damnum in  
4     your closing argument. Your Honor has ruled and I  
5     understand that.

6                     THE COURT: For the record, the Court  
7     is not a hundred percent sure on this one. I  
8     promise.

9                     MR. BUGG: Your Honor, one other  
10    proffer I want to make, and there will probably be  
11    several others, it has to do with Plaintiff's  
12    Exhibit 31 which is the newspaper articles to which  
13    I objected and I made the statement that I believe  
14    that Mr. Davis had had a part in preparing that  
15    article and I'd like to read in the record a portion  
16    of Mr. Dively's deposition just to confirm that that  
17    is indeed how the article was prepared just to  
18    preserve the question.

19                    MR. BAYLISS: I object to him reading  
20    the deposition. The newspaper reporter reported  
21    it. You don't see Mr. Dick Davis' name.

22                    THE COURT: It's like one I saw the  
23    other day. President Bush is out there with the  
24    environmental people and I thought he said my friend  
25    in the newspaper asked him if this was a handout

1 from Daniel Quayle because the President was quoted  
2 as saying, "I am hear talking about  
3 environmentally," and the here is spelt h-e-a-r, and  
4 wanted to know if Daniel Quayle sent him that. That  
5 sounds like something he might do.

6 MR. BUGG: What I'd like to read into  
7 the record is from Mr. Dively's deposition of June  
8 26th, 1992 beginning at Page 84, "QUESTION: I ask  
9 you whether you initiated contact with any  
10 newspaper. You told me you called the newspaper and  
11 tried to get an article published saying you were  
12 cleared. What newspaper was that?"

13 "ANSWER: I believe I called -- I know  
14 I called the Williamsburg paper. That's all I was  
15 really concerned about, that the people over here  
16 that had seen the very defaming and defamatory  
17 article that was written in the Gazette -- I wanted  
18 them to publish an equivalent sized article telling  
19 how I was cleared."

20 "QUESTION: Did they?"

21 "ANSWER: Not right away."

22 "QUESTION: What happened?"

23 "ANSWER: Dick Davis, my attorney, put  
24 together an article and talked with them and they  
25 did publish it."

1 THE COURT: Is that Exhibit 9, this  
2 article?

3 MR. BUGG: Yes. I'd also like the  
4 record to reflect that Exhibit 9 to Mr. Dively's  
5 deposition is also the front article on the package  
6 of articles in this Plaintiff's Exhibit 31 in this  
7 action.

8 The defendant objects to refusal of  
9 Instruction L because it sets for the crime of  
10 embezzlement which the jury should have been  
11 informed of in order to determine whether there was  
12 probable cause.

13 The defendant objects to its refusal of  
14 Instruction M on the ground that it addresses the  
15 potential defense of the intent of the defendant to  
16 later account for monies embezzled which is  
17 pertinent to this case and which the jury should  
18 have been told.

19 The defendant objects to refusal of  
20 Instruction P because it would have told the jury  
21 there was no defense to a charge of embezzlement,  
22 the corporate funds by the president that he thought  
23 that the corporation owed him unpaid compensation  
24 for other benefits or debts.

25 The defendant objects to refusal of the



1 of each of them. Anything further?

2 MR. BUGG: No, sir.

3 THE COURT: Ladies and gentlemen, thank  
4 you very much. Again, I really want to express my  
5 sincere appreciation to you. I know it's been a  
6 rather difficult task for you. I certainly  
7 appreciate that. Thank you again very much. You  
8 have rendered a great service in this case. Thank  
9 you again.

10 (The jury was dismissed.)

11 MR. BUGG: May we see the verdict form,  
12 Your Honor?

13 MR. BAYLISS: We have one juror that  
14 said you never called his name. Frederick Koch?

15 MR. KOCH: Yes.

16 THE COURT: This is your verdict?

17 MR. KOCH: Yes.

18 MR. BUGG: Judge, on behalf of the  
19 defendant, I move to set aside the verdict and enter  
20 judgment for the defendant on the basis of errors in  
21 rulings on the evidence and rulings on instructions  
22 and on the basis of motions made at the conclusion  
23 of the plaintiff's evidence and at the conclusion of  
24 all the evidence including the motion for a mistrial  
25 and also on the basis of rulings on the objection to

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1 argument made at the conclusion of the case.

2 MR. BAYLISS: Judge, I move that  
3 judgment be entered on the defamation claim and I  
4 move that the jury's verdict be set aside as  
5 contrary to the law and evidence on the malicious  
6 prosecution claim and I have no motion on the  
7 intentional infliction claim.

8 THE COURT: Both motions are denied.  
9 Court will enter judgment in the amount of \$50,000  
10 compensatory damages and \$100,000 punitive damages  
11 on the count of defamation.

12 MR. BUGG: Judge, can we have 30 days  
13 to --

14 MR. BAYLISS: No, sir. I ask the  
15 judgment be set today. This case has gone on too  
16 long. This jury obviously knew what they were doing  
17 as far as the time they took.

18 THE COURT: Let me find out what the  
19 purpose of his 30 days.

20 MR. BAYLISS: To brief the issue.

21 MR. BUGG: The motion to set aside the  
22 verdict.

23 THE COURT: No. I won't give you that  
24 time. I will give you ten days. I don't see any  
25 need to prolong this, Mr. Bugg. It's been going on

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1 now -- we had two years. We had six meetings. We  
2 had four days of trial. Even I who have no  
3 connection with this case whatsoever could almost  
4 give you chapter and verse of everything you have  
5 down here for the last four days.

6 This simply was a jury question, and I  
7 think you had one of the most attentive juries that  
8 I've seen in a long time in legal proceedings. I  
9 think -- and they stayed out obviously around three  
10 and a half hours, something like that, and it  
11 certainly shows that they wrestled with this problem  
12 and that's it.

13 MR. BAYLISS: Judge, it's been briefed  
14 and rebriefed. I ask you enter judgment tonight and  
15 get this over with. If he wants to appeal it let  
16 him appeal it but please enter judgment tonight.

17 THE COURT: I will give him ten days to  
18 file a brief and then I will enter judgment if I  
19 overrule the brief.

20 (The proceedings were concluded at  
21 10:20 p.m.)  
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23  
24  
25

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